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LONGORIA & GOLDSTINE ASSOCIATES  
Certified Reporters  
176 West Adams Street  
Suite 2232  
Chicago, Illinois 60603

July 14, 1990

US EPA RECORDS CENTER REGION 5



518512

Re: United States of America  
v.  
Midwest Solvent Recovery, Inc., et al.

Civil Action No. H-79-556

Gentlemen:

Please note that the deposition transcript of July 11, 1990 of Richard E. Boice has been transcribed out of chronological sequence at the request of counsel. The page numbering (lower righthand corner) is meant only to be temporary for convenient use of counsel and should be changed when the prior sessions of the Boice deposition are completed.

If there are any questions, please call my office.

Sincerely yours,

Longoria & Goldstine Associates  
by:

Arnold N. Goldstine

encl.

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF INDIANA  
HARMON DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WILFEST SOLVENT RECOVERY INC.;  
WILFEST INDUSTRIAL WASTE DISPOSAL  
COMPANY, INC.; INDUSTRIAL TECTONICS,  
INC.; WILF & CORPORATION; ERNEST DE  
HART; EDWARD D. CONLEY; HELGA C.  
CONLEY; LOUIE DE HART; CHARLES A.  
LIGHT; DAVID P. LIGHT; DELORES LIGHT;  
EUGENE ELISIAK; JEANETTE ELISIAK;  
LUTHER C. BLOOMBERG; ROBERT J. DAU-  
SON, JR.; JOHN MILETICH; MARY  
MILETICH; PENN CENTRAL CORPORATION;  
INSILCO CORPORATION; RUST-OLEUM, INC.;  
ZENITH RADIO CORPORATION; STANDARD T  
CHEMICAL COMPANY, INC.; AMERICAN CAN  
COMPANY, INC.; PRE FINISH METALS, INC.;  
PREMIER COATINGS, INC.; MOTOROLA, INC.;  
AND DESOTO, INC.;

Defendants.

AMERICAN CAN COMPANY, INC.,  
DESOTO, INC., INSILCO CORPORATION,  
MOTOROLA, INC., PRE FINISH METALS,  
INC., PREMIER COATINGS, INC.,  
RUST-OLEUM, INC., STANDARD T  
CHEMICAL COMPANY, INC.,  
ZENITH RADIO CORPORATION, JOHN  
MILETICH, MARY MILETICH and THE  
PENN CENTRAL CORPORATION,

Third-Party Plaintiffs,

vs.

ACCU-TRONICS, ACTIVE SERVICE CORP.,  
AMERICAN NAMEPLATE & DECORATING CO.,

Civil Action  
No. H-79-556

Third-Party  
Complaint

1 AMERICAN PRINTER & LITHOGRAPHER CO., )  
 AMERICAN RIVET COMPANY, APECO, )  
 2 APPROVED INDUSTRIAL REMOVAL, INC., )  
 ARMOUR PHARMACEUTICAL, ARTISAN HAND )  
 3 PRINTS, ASHLAND CHEMICAL CO., )  
 AVENUE TOWING COMPANY, BARR & )  
 4 MILES, INC., BELDEN ELECTRICAL )  
 PRODUCTS DIV. OF COOPER INDUSTRIES, )  
 5 INC., BRETFORD MANUFACTURING, INC., )  
 BUTLER SPECIALTY COMPANY, INC., )  
 6 BY PRODUCTS MANAGEMENT, CALUMET )  
 CONTAINER, CARGILL, INC., )  
 7 CERMALLOY DIVISION OF FISHER- CALO )  
 CHEMICAL CO., CHICAGO ETCHING CORP., )  
 8 CHICAGO NAMEPLATE COMPANY, )  
 CHICAGO ROTOPRINT CO., )  
 9 C & C INDUSTRIAL MAINTENANCE CORP., )  
 CITY OF GARY, INDIANA, C.P. CLARE )  
 10 DIVISION OF GENERAL INSTRUMENTS )  
 CORP., C.P. HALL CO., )  
 11 C.P. INORGANICS, COMMANDER PACKAGING, )  
 CONNOR FOREST INDUSTRIES, CONSERVA- )  
 12 TION CHEMICAL, CONSUMERS PAINT )  
 FACTORY, INC., CONTINENTAL, )  
 13 WHITE CAP DIVISION OF CONTINENTAL, )  
 CAN COMPANY, CONVERSIONS BY GERBING, )  
 14 COUNTY OF DU PAGE, ILLINOIS, )  
 CROMAME, INC., CROWN CORP & SEAL )  
 15 CO., INC., CULLIGAN INTERNATIONAL )  
 COMPANY, CULLIGAN WATER CON- )  
 16 DITIONING, INC., FRANK J. CURRAN, )  
 CUSTOM METALS PROCESSING, )  
 17 DAP, INC. OF BEECHAM COSMETICS, )  
 DAUBERT CHEMICAL COMPANY, )  
 18 DEUBLIN COMPANY, DORSON CONSTRUCTION )  
 INC., DUO FAST CORPORATION, DU-TONE )  
 19 CORP., HAROLD EGAN, EXCO HOUSEWARE )  
 CO., EL-PAC, INC., EMROSOGRAPH DIS- )  
 20 PLAY MFG. CO., ESS KAY ENAMELING, INC., )  
 ETHICON, INC., FELT PRODUCTS MFG. CO., )  
 21 FLINT INK CORP., FURNAS ELECTRIC )  
 CO., GEARMASTER DIVISION, EMERSON )  
 22 ELECTRIC, THE GILBERT & BENNETT )  
 MFG. CO., GLD LIQUID DISPOSAL, )  
 23 HENRY PRATT COMPANY, J.M. HURPER )  
 CORPORATION, HYDRITE CHEMICAL CO., )  
 24 INTAGLIO CYLINDER SERVICE, INC., )

1 JOHNSON & JOHNSON, J & C TIN MILL )  
 PRODUCTS, KNAACE MFG. CO., LANSING )  
 2 SERVICE CORPORATION, LAUTTER )  
 CHEMICAL, LIQUID DYNAMICS, )  
 3 LIQUID WASTE, INCORPORATED, )  
 STEVE MASTER, MASONITE CORPO- )  
 4 RATION, MCWHARTER CHEMICAL CO., )  
 METAL RECLAIMING CORPORATION, )  
 5 METROPOLITAN CIRCHITS, )  
 MIDWEST RECYCLING COMPANY, MONTGOMERY )  
 6 TANK LINES, MORTON THIOKOL INC., )  
 MR. FRANK, INC., MAMSCO, INC., )  
 7 NATIONAL CAN CORPORATION, NAZ-PAR CO., )  
 NUCLEAR DATA, INC., PPG INDUSTRIES, )  
 8 INC., PASLODE COMPANY, PIERCE & STEVENS )  
 CHEMICAL CORP., PIONEER PAINT PRODUCTS, )  
 9 PREMIER PAINT CO., PYLE-NATIONAL CO., )  
 P-LITE, REFLECTOR HARDWARE CORP., )  
 10 REGAL TUBE, RELIANCE UNIVERSAL, INC., )  
 RICHARDSON GRAPHICS, JOHN ROSCO, )  
 11 ROZEMA INDUSTRIAL WASTE, ST. CHARLES )  
 MANUFACTURING, SCHOLLE CORPORATION, )  
 12 SCRAP HAULERS, SHERWIN WILLIAMS )  
 COMPANY, SHIELD COATINGS, INC., )  
 13 SITE CONTROL COMPANY, SKIL CORPORA- )  
 TION, SPECIAL COATINGS CO., )  
 14 SOUTHERN CALIFORNIA CHEMICAL, )  
 SPECIALTY COATINGS, INC., )  
 15 SPOTWAILS, INC., STAR TRUCKING, STERN )  
 ELECTRONICS, INC., JOE STRAUSNICK, )  
 16 STUART CHEMICAL & PLANT, INC., )  
 SUMNER & MACE, SUN CHEMICAL, )  
 17 SYNTECH WASTE TREATMENT CENTER, )  
 T.R.C., TEEPACK, INC., ALFRED TENNY, )  
 18 THIELE-ENGDAHL, INC., THOMPSON )  
 CHEMICALS, TIFET CHEMICALS, )  
 19 TOUNEY DISPOSAL, TRIPLE S. ETCHANTS, )  
 UNIROYAL, INC., UNITED RESIN AD- )  
 20 HESIVES, INC., U.S. ENVELOPE, U.S. )  
 SCRAP AND DRUM, U.S. STEEL CORP., UNI- )  
 21 VERSAL RESEARCH LABORATORIES, INC., )  
 UNIVERSAL TOOL & STAMPING COMPANY, )  
 22 VANDER MOULEN DISPOSAL, VELSICOL )  
 CHEMICAL CORP., VICTOR GASKET )  
 23 DIVISION OF DANA CORPORATION, )  
 WADNER ELECTRIC BRAKE & CLUCH CO., )  
 24 WARWICK CHEMICAL, WASTE RESEARCH & )

1 RECYCLING, XEROX CORPORATION, and )  
2 other unidentified persons, )  
3 Third-Party Defendants. )

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9 DEPOSITION OF  
10 RICHARD E. NOICE

11 July 11, 1990  
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The continued deposition of RICHARD EDWIN  
BOICE, called for examination by the Defendants,  
pursuant to notice and pursuant to the provisions  
of the Federal Rules of Civil Procedure of the  
United States District Courts, pertaining to the  
taking of depositions for the purpose of  
discovery, taken before Arnold M. Goldstine, a  
Notary Public and Certified Shorthand Reporter  
within and for the County of Cook and State of  
Illinois, at 227 West Monroe Street, on July 11,  
1990, commencing at the hour of 10:30 o'clock a.m.

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APPEARANCES:

Mr. Alan S. Tenenbaum and  
Mr. Leonard M. Gelman  
Trial Attorney  
Environmental Enforcement Section  
Land & Natural Resources Division  
U.S. Department of Justice  
P. O. Box 7611  
Ben Franklin Station  
Washington, D. C. 20044

-and-

Mr. Michael E. Porman  
Assistant Regional Counsel  
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Region V  
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Chicago, Illinois 60604

-and-

Peter M. Moore  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region V  
Office of Regional Counsel  
230 South Dearborn Street  
Chicago, Illinois 60604

appeared on behalf of Plaintiff,  
United States of America;

Ms. Anne M. Rockert  
Ross & Hardies  
150 North Michigan Avenue  
Chicago, Illinois 60601-7567

appeared on behalf of Ashland  
Chemical Company;

1                   **APPEARANCES (CONTINUED):**

2  
3                   Mr. Christopher A. Keele  
4                   Wildman, Harrold, Allen & Dixon  
5                   225 West Wacker Drive  
6                   Chicago, Illinois 60606-1229

7  
8                   appeared on behalf of  
9                   Penn. Central Corporation;

10                  Mr. Robert M. Olian  
11                  Sidley & Austin  
12                  One First National Plaza  
13                  Chicago, Illinois 60603

14                  appeared on behalf of  
15                  Pre Finish Metals, Inc.;

16                  Ms. Lisa Anderson  
17                  Gardner, Carton & Douglas  
18                  Quacker Tower  
19                  321 North Clark Street  
20                  Chicago, Illinois 60610-4795

21                  appeared on behalf of  
22                  Desoto, Inc.;

23                  Mr. Joseph V. Karaganis,  
24                  Ms. Ellen Lois Wisook  
                  Karaganis & White, Ltd.  
                  414 North Orleans Street  
                  Chicago, Illinois 60610

                  appeared on behalf of  
                  American Can Company, Inc.;



1                   **APPEARANCES (CONTINUED):**

2  
3                   Mr. James T. J. Keating  
4                   Law Offices of James T. J. Keating, P.C.  
5                   Printers Row  
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7                   Chicago, Illinois 60605

8                   appeared on behalf of  
9                   Premier Coatings, Inc.;

10                  Mr. Edward T. Leahy  
11                  Leahy, Eisenberg & Fraenkel, Ltd.  
12                  309 West Washington Street  
13                  Chicago, Illinois 60606

14                  appeared on behalf of  
15                  Scholle Corp.;

16                  Mr. David S. Finch and  
17                  Mr. Harvey M. Sheldon  
18                  McDermott, Will & Emery  
19                  227 West Monroe Street  
20                  Chicago, Illinois 60606-5095

21                  Mr. Richard S. VanPheenen  
22                  Cromer, Eaglesfield & Mahor, P.A.  
23                  Station Place  
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                  appeared on behalf of  
                  J & S Tin Mill Products Company,  
                  Inc., et al.;

1       **APPEARANCES (CONTINUED):**

2  
3               Mr. Bradley L. Williams  
4               Ice, Miller, Donadio & Ryan  
5               One American Square  
6               Box 32001  
7               Indianapolis, Indiana 46282

8                       appeared on behalf of  
9                       Indiana Department of Highways.  
10  
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I N D E X

Page

RICHARD BOICE

Direct Examination

By Mr. Finch:

(11)

E X H I B I T S

Boice Deposition Nos.

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RICHARD BOICE,  
having been previously duly sworn,  
was examined and testified further as follows:

DIRECT EXAMINATION

(CONTINUED)

BY MR. FINCH:

Q. Back on the record, please.

I would remind the witness that he is  
still under oath.

This is the continuing deposition of  
Richard Boice, which defendant Standard T  
Chemical Company is taking pursuant to its own  
notices of deposition, originally served  
November 26, 1989.

For the record, I understand that Mr.  
Tenenbaum was forced to sit on a runway for an  
hour after landing in Chicago. They wouldn't  
let him out of the plane. It is now a little  
bit after 11:00 o'clock.

MR. TENENBAUM: So we are half an hour  
later than expected.

MR. FINCH: Yes.

Q. Mr. Boice, when we were last together  
I asked you a series of questions relating

1 among other things to the bases upon which you  
2 formed an impression of bad faith by  
3 individuals connected with the defense of this  
4 case.

5 Do you recall that?

6 A. Yes.

7 Q. Okay.

8 And I asked you a question  
9 specifically on one of those bases, which was  
10 the elimination of certain data.

11 Do you recall that?

12 A. Yes.

13 Q. Okay.

14 You also testified that one of the  
15 bases for your impression of bad faith was a  
16 change or changes made in risk assessment data.

17 Do you recall that?

18 A. Yes.

19 Q. Okay.

20 Could you tell me what changes in risk  
21 assessment data you were alluding to?

22 MR. TENENBAUM: Again. This is subject to  
23 the same objections that I made at the last  
24 session of the deposition.

1 I am not going to instruct you not to  
2 answer, but this whole line is subject to my  
3 objections to the extent that this may seek  
4 discovery on record-review issues.

5 But, you may answer subject to those  
6 objections.

7 A. You mean the risk assessment  
8 assumptions don't you, rather than risk  
9 assessment data?

10 BY MR. FINCH:

11 Q. All right. Risk assessment  
12 assumptions.

13 A. Okay.

14 First of all, they assumed as an  
15 exposure point for the drinking water an  
16 off-site well which is named D-30, I am pretty  
17 sure it was D-30, that happened to be a  
18 relatively clean well. And it didn't --

19 In fact, using the assumptions or the  
20 arguments of ERM itself, there is no sinking  
21 plume, and it is likely that D-30 would not  
22 have been affected by the site's, the Midco  
23 operations. And that the second is they didn't  
24 assume any exposures to the soils on site.

1 Q. So your impression of bad faith as to  
2 the risk assessment assumptions involved  
3 performance by FRM; is that correct?

4 A. The impression is based on all the  
5 information and all the submittals they  
6 submitted and the conversations that took  
7 place, not just the risk assessment itself.

8 Q. You say they. Who do you mean by  
9 they?

10 A. FRM.

11 Q. FRM?

12 A. Yes.

13 Q. Do you mean anybody else?

14 A. No. Performance of FRM.

15 Q. Now, when did FRM first reveal to you  
16 that any of their risk assessment assumptions  
17 involved D-30?

18 A. That would have been when they  
19 submitted the second draft report.

20 Q. And this is the second draft to which  
21 you testified when we were last together?

22 A. Yes.

23 Q. The first time you had any contact  
24 with FRM in this case was when you received

1           that second draft?

2           A.    Yes.

3           Q.    At what point did you form the  
4           impression of bad faith based on the inclusion  
5           of D-30 in the risk assessment assumptions?

6           A.    I have already answered that question.

7           Q.    I don't think you have. This is the  
8           first time I have asked you specifically about  
9           D-30.

10          A.    I already told you that my impression  
11          was based on all the information, all the memos  
12          and submittals from ERM, and not on  
13          specifically on the risk assessment assumptions  
14          only.

15          Q.    At what point did you form the  
16          impression of bad faith to which you testified  
17          as to risk assessment assumptions made by ERM?

18          A.    I have already answered that question.

19          Q.    I don't think you have.

20          MR. TENENBAUM: I am going to have to  
21          object to this sort of arguing with the  
22          witness.

23                 I think the witness answered your  
24          question as to the timing. You are trying to



1 splice it down in a way that the witness said  
2 is not the way that he did it.

3 MR. FINCH: First of all, the witness has  
4 not testified that it cannot be spliced down  
5 that way, although that may be true.

6 And, secondly, if this is an  
7 asked-and-answered objection, counsel can make  
8 it. I'm not asking questions twice, at least I  
9 don't intend to. But, I do expect the witness  
10 to answer the questions absent an instruction  
11 to the contrary.

12 MR. TENENBAUM: Well, all right. I am just  
13 putting my objections on the record.

14 I don't believe that -- I guess at  
15 this point it might be asked and answered, but  
16 that wasn't the original basis for my  
17 objection.

18 The original basis was that it assumes  
19 facts not in evidence. And also you are being  
20 argumentative with the witness.

21 MR. FINCH: I am not trying to be  
22 argumentative. I would appreciate it if the  
23 witness would answer the questions and not  
24 argue with me.

1 MR. TENENBAUM: I think he is telling  
2 you -- I think what he is trying to tell you is  
3 that there is a premise or facts in your  
4 question, that he doesn't necessarily agree  
5 with you.

6 If you want to probe that, go ahead.

7 BY MR. FINCH:

8 Q. Let me approach it this way, Mr.  
9 Boice.

10 When you first received the second  
11 draft of RI report, did you notice at that time  
12 that ERM had supposedly based its risk  
13 assessment assumptions in part on D-30?

14 A. I think I already told you that at the  
15 last session, that my impression of that  
16 followed review of their first draft of the  
17 remedial investigation -- the second draft  
18 remedial investigation report.

19 Q. I don't think that that answers my  
20 question.

21 Would the reporter please read it back  
22 to the witness.

23 (The record was read.)

24 A. I think it is obvious that I would

1 have had to read the report before I realized  
2 that.

3 Q. And so you realized it after you read  
4 the report?

5 A. Yes.

6 Q. When did you read the report, shortly  
7 after you received it, some period of time  
8 after you received it, do you recall?

9 A. No, I don't recall.

10 Q. Can you make a fair estimate of how  
11 long it took you to read the report after you  
12 received it?

13 MR. TENENBAUM: Do you want him to  
14 speculate?

15 MR. FINCH: No, I don't want him to  
16 speculate. I want to know whether he can make  
17 a fair estimate.

18 MR. TENENBAUM: He is asking you only based  
19 on your recollection, your memory. Whatever  
20 you remember, tell him.

21 A. I think I read it over a day or two  
22 after I got it.

23 BY MR. FINCH:

24 Q. Okay.

1                   Did you notice at the time you read it  
2       over that ERM had made a risk assessment  
3       assumption based on D-30?

4           A.    I don't remember.

5           Q.    Do you recall the first point that you  
6       realized that ERM made a risk assessment  
7       assumption based on D-30?

8           A.    No.

9           Q.    Were you familiar with D-30 at the  
10      time that you read the second draft of the RI  
11      report?

12          A.    I don't know what you are talking  
13      about.

14          Q.    You have alluded to what you have  
15      described as a relatively clean off-site well,  
16      which you are calling D-30; is that right?

17          A.    I'm not calling it D-30. It is  
18      numbered D-30.

19          Q.    Who numbered it D-30?

20          A.    Geosciences.

21          Q.    At the time you read the second draft  
22      of the RI report, were you aware of the  
23      existence of a well numbered by Geosciences as  
24      D-30?

1           A.   Obviously I was aware of -- that that  
2 well existed. Yes.

3           Q.   Okay.

4                   So when you read the second draft of  
5 the RI report prepared by ERM, you know what  
6 they were referring to when ERM alluded to  
7 D-30; is that correct?

8           A.   Yes, or I could have looked it up on a  
9 map.

10          Q.   At what point did you realize that ERM  
11 was supposedly attempting to base a risk  
12 assessment on a relatively clean well, D-30?

13          A.   After I reviewed the report.

14          Q.   Did you communicate at that point with  
15 anyone at ERM after you realized that ERM  
16 supposedly was relying on this well as part of  
17 its risk assessment assumption?

18          A.   Yes. We had a meeting that you  
19 referred to during the last deposition.

20          Q.   Did you call anyone at ERM by  
21 telephone prior to the meeting to let them know  
22 that you had noticed that they had supposedly  
23 relied upon D-30?

24          A.   I think we probably sent them some

1 draft comments prior to the meeting.

2 Q. Did you consider it possible that FRM  
3 had a good faith explanation for supposedly  
4 relying on D-30 as a source of its risk  
5 assessment conclusion?

6 A. Would you repeat the question?

7 Q. Let me withdraw it.

8 Did it occur to you that FRM may have  
9 had a good faith reason for including D-30 in  
10 its risk assessment assumptions?

11 A. I'm sure they had a reason for doing  
12 it. Yes. I am sure they had a reason for  
13 doing it.

14 Q. Did it occur to you it could have been  
15 a good faith reason?

16 MR. TENENBAUM: Objection, vague.

17 A. What do you mean by good faith reason?

18 BY MR. FINCH:

19 Q. A reason other than in bad faith. You  
20 used the term bad faith.

21 A. No, that was originally the  
22 defendants' term.

23 Q. But you made it your term last week,  
24 Mr. Boice.

1                   Did it occur to you that FRM may have  
2                   had a reason other than in bad faith for  
3                   including D-30 in its risk assessment  
4                   assumption?

5                   MR. TENENBAUM: When that term bad faith  
6                   was first used, at least at these depositions,  
7                   I did object to it as being vague and  
8                   ambiguous. I reiterate my objection to all  
9                   questions which have that word in it.

10                   If you understand the question, you  
11                   may answer.

12                   A. Yes. That is why we had the meeting  
13                   then.

14                   BY MR. FINCH:

15                   Q. You had the meeting because you  
16                   thought there may have been a reason other than  
17                   one in bad faith for the inclusion of D-30?

18                   A. Well, whether there was one or not, we  
19                   were willing to listen to their explanation.

20                   Q. And willing to consider the  
21                   possibility that their reasons for including  
22                   D-30 in the risk assessment assumptions were  
23                   other than in bad faith?

24                   A. That was unimportant. The important

1        thing was that they produce a report that is  
2        approvable by the Agency.

3            Q.    I didn't ask you whether it was  
4        important. I asked you whether it was true or  
5        not?

6            A.    No.

7            The purpose of the meeting wasn't to  
8        listen to their explanation. The purpose of  
9        the meeting was to communicate what changes  
10       needed to be completed in the report in order  
11       to have it approvable by the Agency.

12          Q.    I didn't ask you what the purpose of  
13       the meeting was, either.

14          A.    What was the question?

15          Q.    Let me rephrase it.

16                At the time that you held the  
17       meeting -- I take it the May 22, 1987  
18       meeting -- with ERM, were you willing to  
19       consider the possibility that ERM's inclusion  
20       of D-30 as part of its risk assessment  
21       assumption was done for reasons other than in  
22       bad faith?

23          A.    That wasn't the purpose of the  
24       meeting. The whole purpose of the meeting was



1 to communicate changes that had to be made to  
2 meet Agency requirements.

3 Q. Would the reporter please read --

4 A. So as far as I am concerned, it wasn't  
5 even -- we didn't care whether ERM was in bad  
6 faith or not.

7 Q. Would the reporter read the question  
8 back to the witness.

9 (The record was read.)

10 A. Would you repeat it again?

11 (The record was reread.)

12 I wasn't even thinking about that at  
13 the time.

14 Q. So at the time you had not yet formed  
15 an impression of bad faith on the part of ERM  
16 in this connection?

17 A. I didn't say that.

18 Q. You had formed an impression of bad  
19 faith on the part of ERM in this connection at  
20 the time the meeting was held?

21 A. Yes.

22 Q. But you weren't thinking about whether  
23 ERM could provide you an explanation for the  
24 performance which formed the basis of this

1 impression at the time of the meeting?

2 A. We were willing to listen to their  
3 explanation, yes.

4 Q. And what explanation did they provide,  
5 if any?

6 A. I don't remember. I would have to  
7 look at the record.

8 Q. Do you know as you sit here today what  
9 their explanation was or is for the inclusion  
10 of D-30 in the risk assessment assumption?

11 A. I already answered that question.

12 MR. TENENBAUM: You can answer it again if  
13 you remember.

14 A. Their reason for including D-30?

15 BY MR. FINCH:

16 Q. Yes.

17 A. They said they should have an off-site  
18 exposure point, I think.

19 Q. Do you disagree with that?

20 A. Well, it is not so much disagree, as  
21 the way they did it. If they wanted an  
22 off-site exposure point, they could have  
23 modeled how much the ground water concentration  
24 would change in traveling the fifty feet or

1       hundred feet or less from being on-site to  
2       being off-site, but they chose to select well  
3       D-30 instead.

4           Q.     Do you know why they selected well  
5       D-30 instead?

6           MR. TENENBAUM:   Object.

7           A.     No.

8           BY MR. FINCH:

9           Q.     Did they ever tell you why they  
10       selected D-30 instead?

11          A.     I would have to look at the record.

12          Q.     Is your impression of their bad faith  
13       based on any conclusions you have drawn as to  
14       why they selected well D-30 instead?

15          A.     I already answered that question.

16          Q.     No, you haven't.

17          A.     I already said that it is based on  
18       review of all the submittals from ERM and the  
19       communications with them.

20          Q.     What submittal specifically do you  
21       recall?

22          A.     Well, there is the first draft or the  
23       second draft of the remedial investigation  
24       report from Midco I and the subsequent draft,

1 correspondence with the ERM, drafts of the  
2 Midco II remedial investigation, the ground  
3 water modeling efforts.

4 Q. Are you through?

5 A. Yes.

6 Q. Do you know whether Geosciences had  
7 selected D-30 as an off-site monitoring point?

8 A. Yes. It is an off-site monitoring  
9 point. It was based on a statement of work  
10 prepared by the US Environmental Protection  
11 Agency.

12 Q. What was the difference between  
13 Geosciences' utilization of D-30 in its draft  
14 of the RI report and ERM's utilization of D-30  
15 in the second draft of the RI report, if any?

16 A. I would have to look it up. As far as  
17 I know, Geosciences didn't put any special  
18 emphasis. They used on-site exposures to the  
19 ground water.

20 Q. What do you mean special emphasis?

21 A. They didn't particularly pick out D-30  
22 as an exposure point.

23 Q. What do you mean particularly pick out  
24 D-30?

1           MR. TENENBAUM: I am going to object to the  
2 question.

3           The witness has indicated he would  
4 have to look it up. If you want to question  
5 him on this, it is your prerogative. But, I am  
6 going to object to him not being able to look  
7 at this detail.

8           But, go ahead to the best of your  
9 knowledge. You can answer.

10          A. I don't know how I can make it more  
11 specific. They didn't select D-30 as an  
12 exposure point, as a particular specific  
13 exposure point.

14          BY MR. FINCH:

15          Q. Your recollection would be refreshed  
16 on this point if I were to show you  
17 Geosciences's draft on the one hand and the ERM  
18 draft on the other?

19          A. Yes, if I had time to read both of  
20 them.

21          Q. And if you had time to review them.

22                Do you know whether the Geosciences  
23 first draft of the RI report is included in the  
24 administrative record?

1           A.    No, it is not.

2           Q.    Do you know whether the ER" second  
3 draft of the RI report is included in the  
4 administrative record?

5           A.    No, it is not.

6           Q.    Do you have copies of either draft in  
7 your possession?

8           A.    Yes.

9           Q.    Okay.

10                  We would --

11           MR. TENENBAUM:  You mean in his possession  
12 here today?

13           MR. FINCH:  No.  I mean in your possession  
14 at your office.

15           A.    Yes.

16           MR. FINCH:  Okay.

17                  I would refer you, Mr. Tenenbaum, to  
18 the specification of documents in both the  
19 notice of deposition for Mr. Boice by name and  
20 the notice of deposition to custodian of  
21 records issued by Standard T on November 26,  
22 1989.

23                  I think that the description of  
24 documents in those specifications is broad

1 enough to comprehend these two drafts, which  
2 the witness has testified are not part of the  
3 administrative record and, thus, obviously  
4 can't be subject to the objections you have  
5 lodged thus far as to inquiry into that record.

6 I would ask that the witness locate  
7 these two drafts and bring them with him for  
8 examination after we resume this deposition  
9 following a lunch break today.

10 MR. TENENBAUM: Well, as you know, our  
11 objections on the discovery on these record  
12 issues are not limited to discovery into the  
13 compilation of the record, but they go as well  
14 into discovery into record issues, as part of  
15 the administrative record.

16 MR. FINCH: This isn't a record issue.

17 MR. TENENBAUM: As you know, I have  
18 objected to your question. And to the extent  
19 it does, I haven't necessarily agreed with your  
20 position that there is any relevant non-record  
21 issue here that you are currently asking  
22 questions about.

23 Aren't these documents that you  
24 already have copies of from your contractor?

1           MR. FINCH: I don't know whether we have  
2       copies of these documents readily available to  
3       us.

4           In addition, there is some possibility  
5       that the versions in Mr. Boice's possession  
6       contain interlineations or notes or other stuff  
7       that may be useful to examine him on.

8           In any event, I will just refer to the  
9       discussion we had the last time.

10          If the government is willing to  
11       stipulate that the impression of bad faith  
12       formed by Mr. Boice has absolutely nothing to  
13       do with this lawsuit and that will not become  
14       an issue in this lawsuit for any purposes at  
15       all, including penalties, including issues  
16       relating to the 106 order, including anything  
17       that falls within either the United States' or  
18       the defendants' burden of proof, then we may be  
19       able to drop portions of this line of  
20       testimony.

21          But, if the government cannot so  
22       stipulate, then it is an issue that is still  
23       relevant to the case or will lead to relevant  
24       evidence. I am entitled to examine the witness



1       on it.

2               He has indicated that there are areas  
3       that he cannot recall. He has indicated that  
4       these documents, which are not part of the  
5       administrative record, would refresh his  
6       recollection. And I think I am entitled to  
7       examine him on it.

8               MR. TENENBAUM: As I have indicated last  
9       time, of course, the defendants have not  
10      provided us with an explanation of their  
11      numerous defenses in the case.

12              We can't possible make a determination  
13      one way or the other on that at this time. And  
14      we wish you would provide us with an  
15      explanation of your defenses.

16              The fact that I will not enter into a  
17      stipulation doesn't mean that it is  
18      automatically a relevant issue, necessarily, I  
19      guess with the circumstances that surround  
20      this.

21              If it will expedite matters, I will  
22      during the lunch break, if you want to give us  
23      some extra time --

24              A. We can't get it over the lunch break,

1           it is in 24-hour storage.

2           MR. TENENBAUM: The witness indicates it is  
3           in 24-hour storage.

4           If we don't finish today, we will try  
5           and bring it at a continuation.

6           MR. FINCH: All right. I doubt I will  
7           finish today.

8           What I will do is I will just continue  
9           my questioning and then we will go back over  
10          this ground as appropriate, if we run into  
11          areas that require the witness to refresh his  
12          recollection with these two documents or with  
13          other documents that may fit into this ambit.

14          MR. TENENBAUM: If I could ask, perhaps you  
15          check your client's records and your  
16          contractor's records, it might be an  
17          expeditious way. You may have a copy readily  
18          available to you.

19          MR. FINCH: I probably do, but I doubt that  
20          it contains Mr. Boice's notes or other  
21          materials.

22          MR. TENENBAUM: In the event that you had  
23          any questions to ask other than any notes, you  
24          could ask them, and then if it turned out there

1           were no notes, we would be done.

2           A.     I sent a copy that I wrote notes on of  
3           all that to them, to the contractor.

4           BY MR. FINCH:

5           Q.     You had sent a copy of the documents  
6           that you wrote notes on to where, Mr. Poice?

7           A.     To your contractor.

8           Q.     To ERM?

9           A.     No.   To Geosciences and to ERM.

10          Q.     Let me ask you about that.

11                   You testified last time that ERM took  
12           over from Geosciences about the time that the  
13           second draft of the RI report was prepared; is  
14           that right?

15          A.     Well, you should know that.   The  
16           defendants should be more aware of when they  
17           hired ERM than I.

18          Q.     I don't know whether that is true or  
19           not.   But, I am asking you whether that was  
20           your testimony?

21          A.     My testimony is that they took over  
22           the second draft of the remedial investigation  
23           report.

24          Q.     And you made notes on that second

1 draft; is that correct?

2 A. Yes.

3 Q. And you sent the copy of the draft  
4 with your notes to whom?

5 A. FPM.

6 Q. And not to Geosciences?

7 A. I believe it was to FRM on it was the  
8 second draft.

9 Q. Did you retain a copy of that draft  
10 which contained your notes?

11 A. Yes.

12 Q. So you wrote notes on the draft in  
13 pencil or pen; is that right?

14 A. Yes.

15 Q. And you made a xerox copy of that  
16 draft after you wrote your notes on it?

17 A. Yes.

18 Q. And you sent the original of the draft  
19 with your notes to FRM?

20 A. Yes.

21 Q. Did you do that before or after the  
22 May 22, 1987 meeting was held, do you recall?

23 A. I don't remember.

24 Q. Was there a letter of transmittal that

1 was prepared with the annotated draft that you  
2 returned to ERM?

3 A. I don't remember.

4 Q. Do you normally as part of your  
5 practice as an RPM send letters of transmittal  
6 when you send documents of that sort to outside  
7 parties?

8 MR. TENENBAUM: Objection.

9 A. Yes.

10 BY MR. FINCH:

11 Q. Is there any reason you would not have  
12 sent such a letter of transmittal in this case?

13 A. Yes.

14 Q. And what is that reason?

15 A. I probably didn't have time to prepare  
16 it.

17 Q. Why would you probably not have had  
18 time to prepare it?

19 A. Because I was busy.

20 Q. Do you recall when the draft was  
21 returned or sent to ERM?

22 A. No.

23 Q. You don't recall whether it was before  
24 or after the meeting?

1 MR. TENENBAUM: It has been answered.

2 A. No.

3 BY MR. FINCH:

4 Q. How do you know you were busy?

5 A. I was busy all the time during that  
6 period of time.

7 Q. So as part of your business, you  
8 ceased sending transmittal letters when you  
9 sent documents out, is that the case?

10 A. I wouldn't say I ceased. Sometimes I  
11 did.

12 Q. And this time you think you didn't do  
13 it?

14 A. I don't think I sent a transmittal  
15 letter. I'm not sure.

16 Q. Do you recall whom at ERM you sent the  
17 draft to?

18 A. It would have been to Roy Ball or  
19 possibly Elsie Milleno. M-i-l-l-e-n-o.

20 Q. Do you recall whether you had ever  
21 spoken to Mr. Ball or Ms. Milleno prior to  
22 sending the draft back to one of them?

23 A. I don't remember.

24 Q. Do you recall whether you had met

1           either Mr. Ball or Ms. Milleno at the time that  
2           you sent the draft back to one of them?

3           A.    I don't remember.

4           Q.    Did you know who either of them were?

5           A.    What do you mean did I know who at  
6           what time?

7           Q.    Other than in connection with ERM, did  
8           you have any knowledge of who they were?

9           A.    I still don't know.

10          Q.    All right. It is a vague question.

11                You also testified when we were last  
12           together, Mr. Boice, that ERM's ground water  
13           modeling formed part of your impression of bad  
14           faith.

15                Do you recall that?

16          A.    Yes.

17          Q.    What ground water modeling were you  
18           alluding to?

19          A.    There was a ground water modeling  
20           effort conducted by ERM.

21          Q.    Did this ground water modeling appear  
22           in the second draft of the RI report?

23          A.    I don't remember.

24          Q.    Did it appear in a document prepared

1 before the first or before the second draft of  
2 the RI report?

3 A. No.

4 Q. Is it possible that it appeared in a  
5 document that was prepared after the second  
6 draft of the RI report?

7 A. It is possible or it might have been  
8 part of the -- the second draft RI. I don't  
9 remember.

10 Q. You don't recall?

11 A. No.

12 Q. Would a review of the second draft of  
13 the RI report refresh your recollection?

14 A. (Nodding head.)

15 Q. Pardon me?

16 A. Yes.

17 Q. Why did the ground water modeling by  
18 ERM play a role in your impression of their bad  
19 faith?

20 A. Because they, again, didn't use  
21 conservative assumptions or the type of  
22 assumptions the Agency could approve of.

23 Q. They didn't use conservative  
24 assumptions, did you say that?



1 A. If I remember right, that's correct.

2 Q. Or the type of assumptions of which  
3 the Agency could approve?

4 A. Right.

5 Q. Is that correct?

6 A. Yes.

7 Q. What do you mean by conservative  
8 assumptions?

9 A. Well, in risk assessment it would mean  
10 erring on the side of caution for  
11 protectiveness.

12 Q. I am sorry, I have trouble hearing  
13 you.

14 Erring on the side of caution?

15 A. Erring on the side of protectiveness.

16 Q. What is protectiveness?

17 A. Protectiveness of the human health,  
18 the environment.

19 Q. How were ERM's ground water modeling  
20 assumptions insufficiently conservative?

21 A. I don't remember.

22 Q. Do you recall generally why you think  
23 they were insufficiently conservative?

24 A. No, I don't remember.

1 Q. So as you sit here now, you have no  
2 reason, you have no way of knowing why you just  
3 testified that these assumptions were not  
4 conservative enough?

5 MR. TENENBAUM: Hold it. Without reviewing  
6 documents you mean?

7 MR. FINCH: However general this witness'  
8 recollection may be. I want to know what it is  
9 at this point.

10 MR. TENENBAUM: Your question said as you  
11 sit here now, you have no way of knowing.

12 That didn't make clear whether you  
13 were allowing him to consider reviewing  
14 documents.

15 MR. FINCH: Let me withdraw the question.

16 Q. As you sit here now, Mr. Roice, you  
17 have no way of recalling at all why you just  
18 testified that ERM's ground water modeling  
19 assumptions were insufficiently conservative?

20 MR. TENENBAUM: Same objection.

21 A. I think my whole testimony here is  
22 based on my best recollection.

23 BY MR. FINCH:

24 Q. All right.

1           A.    I am testifying right now as to what  
2 my best recollection is.

3           Q.    What is your best recollection as to  
4 why you just testified that ERM's ground water  
5 modeling assumptions were insufficiently  
6 conservative?

7           A.    I already answered that question.

8           Q.    No, you didn't. Please answer the  
9 question.

10          MR. TENENBAUM: You can answer it again,  
11 subject to our objection.

12          A.    Okay.

13                Well, let's see, in the feasibility  
14 study part where Geosciences assumed that -- or  
15 I should say ERM submitted a ground water model  
16 to us that showed that the source was  
17 discontinued, the ground water would clean up  
18 itself through natural attenuation at about 50  
19 meters.

20          BY MR. FINCH:

21          Q.    I am having trouble hearing you. If  
22 you could perhaps enunciate a little better I  
23 would be able to understand what you are  
24 saying.

1           A.    Okay.

2                   In the feasibility study, ERM  
3       submitted a ground water model that showed that  
4       if the source of contamination was cut off at  
5       Midco I and Midco II, that ground water would  
6       naturally attenuate to meet clean-up action  
7       levels in about fifteen years or ten years.

8                   After Weston reviewed it and corrected  
9       their assumptions, it came out to over a  
10      hundred years.

11           Q.    What assumptions did Weston correct?

12           A.    I don't remember.

13           Q.    Do you know what type of assumptions  
14      they were?

15           A.    Yes. They had to do with natural  
16      degradation in the aquifer, volatilization from  
17      the aquifer, and other assumptions.

18           Q.    So if I understand you correctly, you  
19      recall that ERM made some assumptions about the  
20      natural degradation of the aquifer that were  
21      insufficiently conservative and resulted in  
22      incorrect conclusions about the need to  
23      remediate ground water; is that correct?

24           A.    That's correct.

1           Q.    Is it your testimony that these  
2           insufficiently conservative assumptions were  
3           made in bad faith?

4           A.    Did I say that?

5           Q.    I am asking you.

6           A.    I already said that their overall  
7           performance gave me an impression of bad faith.

8           Q.    But you are not testifying that the  
9           assumptions made on ground water modeling  
10          specifically were made in bad faith?

11          MR. TENENBAUM: Asked and answered. Vague  
12          and ambiguous. You can try and answer if you  
13          can.

14          A.    I already answered that question.

15          BY MR. FINCH:

16          Q.    And did you already answer it yes or  
17          did you already answer it no?

18          MR. TENENBAUM: You are leaving out  
19          possibilities that --

20          A.    I think I answered it with an  
21          explanation and it is in the record, the court  
22          reporter's record.

23          BY MR. FINCH:

24          Q.    Mr. Boice, it really would go a little

1 bit more smoothly if you would not assume your  
2 counsel's role of objecting to my questions,  
3 and if you would just answer them. Otherwise,  
4 I have got to keep asking them and we can't get  
5 off of this stuff and move on.

6 MR. TENENBAUM: Wait a second now. I don't  
7 think that is fair.

8 I think a lot depends on how you word  
9 the questions. If they present easy yes or no  
10 answers, then it is easy to do so. If they are  
11 ambiguous and can't present an easy yes or no  
12 answer, then what choice does the witness have.

13 MR. FINCH: He can give me the best answer  
14 he can.

15 MR. TENENBAUM: He is trying to.

16 MR. FINCH: I don't think so.

17 MR. TENENBAUM: He is trying to.

18 If you really want to expedite this,  
19 I would suggest that you word the questions so  
20 that they do not have these subtleties and  
21 ambiguities.

22 But, let's move on.

23 BY MR. FINCH:

24 Q. You just testified, Mr. Boice, that

1 the type of assumptions FRM made were not the  
2 type of which EPA could approve; is that  
3 correct?

4 A. That's correct.

5 Q. How were how were they not the type of  
6 which EPA could approve?

7 A. I don't remember.

8 Q. As you sit here now, what is your best  
9 recollection of why you just testified --

10 A. I already answered that question.

11 Q. I haven't finished asking it so how do  
12 you know you already answered it?

13 MR. TENENBAUM: What is the full question?

14 BY MR. FINCH:

15 Q. As you sit here now, what is your best  
16 recollection of why you just testified that  
17 these were not the type of assumptions of which  
18 EPA could approve?

19 A. I just answered that question.

20 Q. In connection with the conservatism of  
21 the assumptions?

22 A. Yes. I just answered that.

23 Q. Okay.

24 A. I don't see why you are asking the

1 same question twice.

2 Q. Well, because you gave two reasons,  
3 Mr. Boice.

4 A. Seven or eight attorneys, wasting  
5 their time.

6 Q. You gave me two reasons, Mr. Boice,  
7 why ERM's ground water modeling --

8 A. Two reasons that I can remember.

9 MR. TENENBAUM: Maybe I can expedite  
10 matters. He gave two reasons or two phrases  
11 that maybe in his mind is the same reason. It  
12 sounds like it might be, I don't know.

13 MR. FINCH: Then let's find that out.

14 MR. TENENBAUM: That's the kind of problem  
15 we are having. You are assuming things from  
16 his answers which is not the way he may have  
17 meant them.

18 MR. FINCH: I don't know how he meant them  
19 until he can testify and tell me how he meant  
20 them.

21 MR. TENENBAUM: You don't have to build in  
22 assumptions in your question, but let's find  
23 out.

24 MR. FINCH: All right, that's fair enough.



1           Q.     So, is it your testimony then, Mr.  
2     Boice, that the type of assumptions, the  
3     conservative assumptions that FRM didn't make  
4     in connection with its ground water modeling  
5     are the type of assumptions that EPA could  
6     approve, they are the same thing; is that  
7     right?

8           A.     I don't understand your question.

9           MR. TENENBAUM: He wants to know in your  
10    previous answer, when you made reference to  
11    conservative assumptions and references to  
12    assumptions that the Agency could not approve,  
13    whether you were referring to the same thing,  
14    overlapping things, or two different things.

15          BY MR. FINCH:

16          Q.     Right.

17          A.     I still don't understand the question.

18          MR. TENENBAUM: Were there two separate  
19    reasons, were they overlapping reasons? Were  
20    they the same reason, two ways of saying the  
21    same thing?

22          A.     I don't understand what you are  
23    getting to.

24

1 BY MR. FINCH:

2 Q. What type of assumption can EPA  
3 approve in ground water modeling in sites such  
4 as the Midco I and Midco II sites?

5 MR. TENENBAUM: Objection, calls for a  
6 legal conclusion.

7 A. Well, EPA normally uses realistic  
8 assumptions that are reasonable worst-case  
9 scenario for risk assessments.

10 BY MR. FINCH:

11 Q. As opposed to an unreasonable  
12 worst-case scenario?

13 A. Yes.

14 Q. What is the different between a  
15 reasonable worst-case scenario and an  
16 unreasonable worst-case scenario?

17 A. That depends on the situation.

18 Q. And what was the difference in the  
19 case of ERM's ground water modeling assumption?

20 A. I don't remember, other than what I  
21 have already told you.

22 Q. Is there anything that would refresh  
23 your recollection?

24 A. Yes.

1 O. What would that be?

2 A. Reviewing the comments we had on the  
3 reports.

4 O. These are the handwritten comments you  
5 made on the second draft of the RI report?

6 A. No. These were comments from Roy W.  
7 Weston. We sent it primarily to Roy Weston who  
8 reviewed the ground water modeling.

9 MR. FINCH: Can we go off the record for  
10 just a minute.

11 (Discussion had off the record.)

12 O. All right.

13 Mr. Boice, is it your testimony that  
14 the only specific performance item, to use your  
15 phrase from last time, that formed the basis of  
16 your impression of ERM's bad faith were the  
17 elimination of Geosciences' data, changes in  
18 risk assessment assumptions, and ground water  
19 modeling?

20 A. Those are three major ones.

21 But, as I said before, it is based on  
22 their overall performance of everything they  
23 have submitted. Their memos, their letters.  
24 That is just what I can think of right now.

1 Q. Can you think of any specific minor  
2 aspects of ERM's performance that contributed  
3 to your impression of its bad faith?

4 A. No.

5 Q. Is it because you don't know or you  
6 don't recall?

7 A. I don't know. I have to check the  
8 documents.

9 Q. You don't know whether you don't know,  
10 or you don't recall whether you don't know, or  
11 you don't recall whether you don't recall;  
12 which is it?

13 A. Would you repeat the question?

14 MR. TENENBAUM: I suggest you withdraw that  
15 question. Rephrase it.

16 A. Please.

17 BY MR. FINCH:

18 Q. Did anything ERM proposed with respect  
19 to soil solidification play a role in your  
20 impression of its bad faith?

21 A. Whose bad faith?

22 Q. Your impression of ERM's bad faith.

23 A. I never said I had an impression of  
24 ERM's bad faith.

1 Q. Your impression of bad faith on the  
2 part of the defendant group as a whole.

3 A. As of what point?

4 Q. As of any point.

5 A. I guess I would have to say yes.

6 Q. Did ERM's position or proposals on a  
7 discharge point play a role in your impression  
8 of bad faith on the part of the defendant group  
9 as a whole?

10 A. You mean including negotiations?

11 Q. At any point.

12 MR. TENENBAUM: It is a little bit unclear  
13 whether you are focusing on just ERM or ERM  
14 and/or the defendants.

15 MR. FINCH: Well, I am focusing on conduct  
16 or performance by ERM and the role that it  
17 played in Mr. Boice's impression of bad faith  
18 among the defendant group as a whole.

19 A. I would have to say yes.

20 Q. Go back to solidification.

21 How did ERM's proposals or position on  
22 soil solidification play a role in your  
23 impression of bad faith among the defendant  
24 group as a whole?

1           A.    Okay.

2                   Well, first of all, Dames & Moore, I  
3   presume they were going through ERM, when I  
4   called them about the process, they suggested  
5   that solidification would treat everything  
6   including volatile organic compounds.

7                   When I checked with my research  
8   people, with the office of research and  
9   development with EPA, they indicated that in  
10  general they don't think organic compounds are  
11  treated by solidification and specifically for  
12  volatile organics, that they were primarily  
13  driven off during the process.

14                  In addition, the fact that throughout  
15  the feasibility study, RIFS -- well, throughout  
16  the feasibility study, ERM seemed to promote  
17  the effectiveness of solidification.

18                  But, then during the public comment  
19  period and during negotiations, they argued  
20  against the effectiveness of solidification.  
21  Now they supported arguments by the defendants  
22  that solidification would not be effective.

23           Q.    I want to understand your answer.

24                   EPA research people did not agree with

1 the notion that solidification would treat  
2 everything including volatile organic  
3 compounds?

4 A. That is true.

5 Q. Okay.

6 So, it is your understanding that  
7 James & Moore suggested that solidification  
8 would actually treat volatile organic  
9 compounds?

10 A. That's correct.

11 Q. What do you mean by treat?

12 A. By treatment, it indicates that it  
13 would actually tie it up in the matrix of the  
14 solidified material.

15 And then if you ran a test before and  
16 after, that it would -- it wouldn't come out  
17 afterwards, even though it would come out  
18 before.

19 Q. When you say tie up in the matrix of  
20 the solidified material, do you mean to say  
21 that the composition of the VOC's would in any  
22 sense be altered by solidification?

23 A. That is what it suggests, yes. That  
24 the actual chemical make-up of the molecules

1 would be altered or incorporated somehow into  
2 the crystal structure of the solidified  
3 material.

4 Q. So that I mean is it either/or or is  
5 it the same thing?

6 Is it your recollection that Dames &  
7 Moore said that the VOC's would be chemically  
8 altered by solidification or that the VOC's  
9 would be immobilized by the solidification?

10 A. Well, since they indicated it would be  
11 treated, that they had suggested that it would  
12 be either/or.

13 Q. So, from your understanding,  
14 immobilization of VOC's by solidification is a  
15 form of treatment, even if there is no chemical  
16 alteration of the VOC's by the process?

17 MR. TENENBAUM: Object, on the same grounds  
18 as earlier.

19 A. I think I indicated before that there  
20 would be some type of chemical interaction. It  
21 couldn't just enclose it into the solidified  
22 matrix.

23 BY MR. FINCH:

24 Q. Is it your understanding as you sit



1 here today that soil solidification would in  
2 fact involve this sort of interaction?

3 MR. TENENBAUM: Same objection.

4 A. What interaction?

5 BY MR. FINCH:

6 Q. A chemical interaction above and  
7 beyond immobilization of the VOC's.

8 MR. TENENBAUM: Same objection.

9 A. I don't know what you mean by  
10 immobilization.

11 BY MR. FINCH:

12 Q. Let me withdraw that.

13 Is it your understanding that Dames &  
14 Moore suggested that VOC's would in fact be  
15 chemically altered by soil solidification?

16 MR. TENENBAUM: Asked and answered. Vague.

17 A. I don't understand your question.

18 BY MR. FINCH:

19 Q. That there would be a change in the  
20 molecular structure of the VOC's as a result of  
21 solidification.

22 A. We didn't go into these specifics.  
23 They just indicated it would be treated.

24 Q. When you use the word treatment as

1 part of your responsibilities as an RPM, do you  
2 mean chemical alteration or do you mean  
3 something else?

4 MR. TENENBAUM: Object to the form.

5 A. In the solidification processes  
6 generally the Agency is presently using before  
7 and after test using the toxicity  
8 characteristics leaching procedures.

9 If that shows substantial reduction  
10 afterwards compared to before the  
11 solidification, then it is considered to have  
12 treated the material in general.

13 Q. So under your understanding of the  
14 Agency's use of the term treatment, if there is  
15 a significant reduction in the leachability of  
16 VOC's through soil solidification, that is  
17 treatment, even if the molecular structure of  
18 those VOC's remains unchanged by soil  
19 solidification; is that right?

20 A. Not for VOC's, no.

21 VOC's are primarily -- the TCLP test  
22 we think and the solidification process drives  
23 the VOC's off into the air. And, therefore, it  
24 doesn't treat them.

1                   Even though in the case of VOC's you  
2                   do a TCLP before and after, and you have a  
3                   reduction, it is because the VOC's would  
4                   largely have been driven off into the air.

5                   Q.    Do you recall what, if anything, Dames  
6                   & Moore suggested about the effect of soil  
7                   solidification on metals?

8                   A.    They indicated it would -- they  
9                   indicated it would basically treat everything.

10                  Q.    How?

11                  Did they indicate how it would treat  
12                  metals, do you recall?

13                  A.    No, there was no specifics.

14                  Q.    And what did EPA's research people  
15                  conclude as to Dames & Moore's suggestion on  
16                  the effect of soil solidification at Midco I  
17                  and Midco II?

18                  A.    The research people didn't  
19                  specifically review Dames & Moore's report.

20                  Q.    Did they play any role at all in  
21                  providing information on soil solidification to  
22                  you for Midco I and Midco II?

23                  A.    Yes, I called them and talked to them  
24                  about it.

1 Q. And what did they tell you?

2 A. I think I already told you what they  
3 told me. That volatile organics, in general,  
4 solidification, they don't feel that  
5 solidification is treatment for organic  
6 compounds. And for volatile organics, volatile  
7 organics are largely driven off into the air  
8 during the process.

9 Q. Did they say what solidification is  
10 treatment for?

11 MR. TENENBAUM: Objection.

12 A. No. I didn't specifically discuss  
13 that with them. But, maybe I asked them about  
14 a few things, but I'm not sure.

15 BY MR. FINCH:

16 Q. Do you recall when you had this  
17 communication with your research people?

18 A. It was during these -- during the  
19 feasibility study.

20 Q. Was it after ERM submitted the second  
21 draft of the RI report?

22 A. Yes.

23 Q. And if I understand your testimony,  
24 you recall that ERM changed its position on

1       soil solidification?

2           A.    Yes.

3           Q.    And how did they change their  
4       position?

5           A.    Well, before -- during the feasibility  
6       study, I presume, they were overall, the whole  
7       study, I presume they were supporting. They  
8       never said anything against the effectiveness  
9       of solidification.

10                Afterwards they -- in their comments  
11       submitted during the public comment period,  
12       they argued that solidification would not be, I  
13       think it was, they said it was not cost  
14       effective, compared to a cap.

15           Q.    Did they say that solidification was  
16       not an effective remedy for soil treatment?

17           MR. TENENBAUM: Same continuing objection.

18           A.    I would have to read this document and  
19       see exactly what they said.

20           BY MR. FINCH:

21           Q.    So as you sit here today, you don't  
22       recall whether ERM had any objections to soil  
23       solidification as an effective remedy for soil  
24       treatment or for soil?

1           A.    I wouldn't say that.  Since they  
2           argued that it wouldn't be effective compared,  
3           cost effective compared to a cap.

4           Q.    I am not talking about how cost  
5           effective it was.  I am talking about --

6           A.    That would suggest that it wouldn't be  
7           very effective.

8           Q.    How would it suggest it wouldn't be  
9           very effective?

10          MR. TENENBAUM:  I think maybe there is some  
11          confusion.  You want him to take cost  
12          considerations out entirely?

13          MR. FINCH:  No.

14                 I want to know whether this witness in  
15          his own mind treats the effectiveness of the  
16          remedy as something different than the cost  
17          effectiveness of the remedy.  Why don't we  
18          start with that.

19          MR. TENENBAUM:  Well, I don't know that you  
20          are entitled to ask that.  That seems to be  
21          going to remedy issues rather than --

22          MR. FINCH:  No, it may have some relevance  
23          on remedy issues.  But, as we discussed last  
24          time, Alan, I am not asking him about it in

1           that connection.

2           MR. TENENBAUM: I don't see the connection  
3           to the line of bad faith questioning.

4           MR. FINCH: I think the question is pretty  
5           obvious.

6           MR. TENENBAUM: What is the connection?

7           MR. FINCH: The connection is that I want  
8           to know if this witness in forming his  
9           impression of bad faith, based on things FRM  
10          did or didn't do, understood what FRM did or  
11          didn't do.

12          MR. TENENBAUM: You want him -- you are  
13          making him do this all without looking at the  
14          documents?

15          MR. FINCH: Well, we will get to that.

16          MR. KEATING: The basic difference in  
17          semantics, when you say it is not cost  
18          effective, it doesn't necessarily mean it is  
19          not effective. They are two different  
20          meanings.

21          MR. TENENBAUM: That is what I was trying  
22          to get clarified.

23          MR. FINCH: That's what I want to clarify.  
24          What this witness' understanding of these terms

1 is or was at the time, so that we can  
2 understand why he formed the conclusions he did  
3 about ERM's performance.

4 MR. TENENBAUM: Why wouldn't the  
5 appropriate question be as to the witness'  
6 understanding of ERM's comments relating to  
7 cost effectiveness and effectiveness.

8 Wouldn't that be the right question,  
9 rather than the way you phrased it, tying it  
10 into the remedy?

11 MR. FINCH: Right, I am not trying to tie  
12 it into the remedy. I am just trying to phrase  
13 these questions the best we can as we go along  
14 and I will keep trying.

15 MR. TENENBAUM: Okay.

16 A. So what is the question now?

17 BY MR. FINCH:

18 Q. Let me sort of pickup from here.

19 Mr. Boice, is it your understanding as  
20 you sit here now that ERM ever objected to soil  
21 solidification on grounds that it was not or is  
22 not an effective remedy for treating the soil?

23 A. I think they indicated that in their  
24 comments, but I would have to look at them to



1       make sure.

2               I know the defendants made that point.  
3       But, I'm not sure about whether ERM  
4       specifically stated that or not.

5               Q.    You know that the defendants made the  
6       point that soil solidification is not an  
7       effective remedy for treating the soil?

8               A.    They argued that.   Yes.

9               Q.    As you sit here now, what do you  
10      understand defendants' arguments on this point  
11      to have been?

12              MR. TENENBAUM:   Well --

13              MR. FINCH:   Are you objecting, Alan?

14                     I am entitled to know the witness'  
15      understanding.

16              MR. TENENBAUM:   I thought we were focusing  
17      on ERM.   You want to now broaden than to the  
18      defendants.   Okay.

19              MR. FINCH:   I am trying, I will get back to  
20      ERM.   But, I am trying to get there based on  
21      what this witness recalls or doesn't recall.  
22      That's all I can do.

23              A.    The defendants argued that it  
24      basically wouldn't be any more effective than a

1 cap.

2 Q. The defendants didn't argue that it  
3 wouldn't be effective, did they?

4 A. No. They argued it wouldn't be  
5 effective.

6 Q. They argued it wouldn't be effective?

7 A. Right.

8 Q. What do you recall as you sit here now  
9 of the nature of defendants' argument that soil  
10 solidification would not be effective?

11 MR. TENENBAUM: Same continuing objection.

12 A. I would have to look at the documents.

13 BY MR. FINCH:

14 Q. Does that mean you don't recall  
15 anything at all about the nature of defendants'  
16 argument on this point?

17 A. I already indicated that I did. They  
18 indicated it wasn't as effective as a cap.

19 Q. Okay.

20 So, it is your recollection that  
21 defendants argued that a cap is a better remedy  
22 than soil solidification or a more effective  
23 remedy than soil solidification?

24 A. They used the word cost effective.

1           Q.    They used the word cost effective.  I  
2   am not asking you about cost effectiveness.  I  
3   am asking you about effectiveness.

4           MP. TENENBAUM:  Well, you can ask it that  
5   way, but cost effective has the word effective  
6   in it.  So you are trying to splice it pretty  
7   finely.

8           I will object as vague and ambiguous.  
9   You can answer if you understand it.

10          MR. FINCH:  It doesn't strike me as a real  
11   fine distinction.

12          A.    Will you repeat the question.

13          Q.    What do you recall of defendants'  
14   argument or supposed argument that soil  
15   solidification is not an effective soil remedy?

16          A.    I already answered that.

17          Q.    Okay.

18                I am not asking you about cost  
19   effectiveness.  I am asking you about  
20   effectiveness.

21          A.    That's the same question you asked  
22   about four questions ago or something like  
23   that.

24          Q.    Your answer is the same?

1 A. Yes.

2 Q. Do you have in your mind as you sit  
3 here today a distinction between cost  
4 effectiveness and effectiveness in this  
5 context?

6 A. Yes.

7 Q. And what is that distinction?

8 A. Effectiveness means how well it works  
9 basically not considering costs. In other  
10 words, it would be very effective to go out and  
11 incinerate the whole soil on the site. That  
12 would be a very effective treatment of the  
13 organic compounds in the soils.

14 Cost effectiveness you take the cost  
15 of that compared to effectiveness of that  
16 remedy.

17 Q. Do you understand that the defendants  
18 have ever argued that soil solidification  
19 without regard to costs one way or the other is  
20 an ineffective soil remedy for Midco I or Midco  
21 II?

22 A. I am pretty sure they made that  
23 argument.

24 Q. You are pretty sure?

1           A.    Yes.

2           Q.    But you don't know?

3           A.    I would have to check the documents to  
4           make sure, yes.

5           Q.    Why are you pretty sure?

6           A.    Because I read the documents in the  
7           past. They are very lengthy documents.

8           Q.    And you were left with an impression  
9           that the defendants made an argument that soil  
10          solidification is, without regard to costs one  
11          way or the other, an ineffective remedy for  
12          soil?

13          A.    I think that was their argument. Yes.  
14          At least there were some arguments to that  
15          effect in there.

16          MR. TENENBAUM: I do object to this line of  
17          questioning. You have asked him the same  
18          question five times. And the witness indicated  
19          he needs to see the document.

20                You haven't let him see the document.

21          BY MR. FINCH:

22          Q.    All right.

23                What document would refresh your  
24          recollection?

1           A.    The documents submitted by the  
2           defendants during the negotiations and also  
3           following, their comments on the unilateral  
4           administrative order.

5           Q.    What documents submitted during  
6           negotiations are you alluding to?

7           A.    The documents they submitted during  
8           December, their comments on the unilateral  
9           administrative order.

10          Q.    All right.

11                I would ask the reporter to mark as  
12           the next Boice deposition exhibit, whatever  
13           that might be, for identification -- No. 50, I  
14           take it, a document of a number of unnumbered  
15           pages, which purports to be responses of the US  
16           Environmental Protection Agency to comments  
17           from respondents on the Midco I and Midco II  
18           unilateral administrative orders issued  
19           November 15, 1989.

20                (The document above-referred to  
21           was marked Boice Deposition  
22           Exhibit No. 50 for identification.)

23           MR. TENENBAUM: I think the witness is  
24           referring to a document that EPA received.

1           A.    Right.  That's not the document we  
2   received.

3           MR. FINCH:  I understand.  But, this  
4   document contains both the comments and the  
5   responses.

6           A.    It contains a summary of the comments,  
7   yes.

8           Q.    Okay.

9                    So I think it may help refresh the  
10   witness' recollection.  If he testifies it  
11   doesn't, then we will  --

12           MR. TENENBAUM:  Well, if that is what you  
13   want to do, fine.  I would still say the  
14   document to show him is the comments  
15   themselves.

16           MR. FINCH:  All right.

17                    Go off the record for a moment.

18

19                           (Whereupon a recess was  
20                   taken until 1:30 o'clock  
21                   p.m. of the same day.

22

23

24

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF INDIANA  
NANCON DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

۷۳.

MIDWEST SOLVENT RECOVERY INC.;  
MIDWEST INDUSTRIAL WASTE DISPOSAL  
COMPANY, INC.; INDUSTRIAL TECTONICS,  
INC.; V & E CORPORATION; ERNEST DE  
HART; EDWARD D. CONLEY; HELGA C.  
CONLEY; LOVIE DE HART; CHARLES A.  
LICHT; DAVID E. LICHT; DELORES LICHT;  
EUGENE ELISIAK; JEANETTE ELISIAK;  
LUTHER C. BLOOMBERG; ROBERT J. DAW-  
SON, JR.; JOHN MILETICH; MARY  
MILETICH; PENN CENTRAL CORPORATION;  
INSILCO CORPORATION; RUST-OLEUM, INC.  
ZENITH RADIO CORPORATION; STANDARD T  
CHEMICAL COMPANY, INC.; AMERICAN CAN  
COMPANY, INC.; PRE FINISH METALS, INC  
PREMIER COATINGS, INC.; MOTOROLA, INC  
and DESOTO, INC.;

**Defendants.**

AMERICAN CAN COMPANY, INC.,  
DESOTO, INC., INSILCO CORPORATION,  
MOTOROLA, INC., PRE FINISH METALS,  
INC., PREMIER COATINGS, INC.,  
RUST-OLEUM, INC., STANDARD T  
CHEMICAL COMPANY, INC.,  
ZENITH RADIO CORPORATION, JOHN  
MILETICH, MARY MILETICH and THE  
PENN CENTRAL CORPORATION,

**Third-Party Plaintiffs,**

**vs.**

ACCUSTRONICS, ACTIVE SERVICE CORP.,  
AMERICAN NAMEPLATE & DECORATING CO.,

) Civil Action  
) No. H-70-555  
) Third-Party  
) Complaint



1	AMERICAN PRINTER & LITHOGRAPHER CO.,	)
	AMERICAN RIVET COMPANY, APECO,	)
2	APPROVED INDUSTRIAL REMOVAL, INC.,	)
	ARMOUR PHARMACEUTICAL, ARTISAN HAND	)
3	PRINTS, ASHLAND CHEMICAL CO.,	)
	AVENUE TOWING COMPANY, BARR &	)
4	MILES, INC., BELDEN ELECTRICAL	)
	PRODUCTS DIV. OF COOPER INDUSTRIES,	)
5	INC., BRETFORD MANUFACTURING, INC.,	)
	BUTLER SPECIALTY COMPANY, INC.,	)
6	BY PRODUCTS MANAGEMENT, CALUMET	)
	CONTAINER, CARGILL, INC.,	)
7	CHEMALLOY DIVISION OF FISHER- CALO	)
	CHEMICAL CO., CHICAGO ETCHING CORP.,	)
8	CHICAGO NAMEPLATE COMPANY,	)
	CHICAGO ROTOPRINT CO.,	)
9	C & C INDUSTRIAL MAINTENANCE CORP.,	)
	CITY OF GARY, INDIANA, C.P. CLARE	)
10	DIVISION OF GENERAL INSTRUMENTS	)
	CORP., C.P. HALL CO.,	)
11	C.P. INORGANICS, COMMANDER PACKAGING,	)
	CONNOR FOREST INDUSTRIES, CONSERVA-	)
12	TION CHEMICAL, CONSUMERS PAINT	)
	FACTORY, INC., CONTINENTAL	)
13	WHITE CAP DIVISION OF CONTINENTAL	)
	CAN COMPANY, CONVERSIONS BY GERRING,	)
14	COUNTY OF DU PAGE, ILLINOIS,	)
	CROWAME, INC., CROWN CORK & SEAL	)
15	CO., INC., CULLIGAN INTERNATIONAL	)
	COMPANY, CULLIGAN WATER CON-	)
16	DITIONING, INC., FRANK J. CURRAN,	)
	CUSTOM METALS PROCESSING,	)
17	DAP, INC. OF BEFCAM COSMETICS,	)
	DAUBERT CHEMICAL COMPANY,	)
18	DEUBLIN COMPANY, DORSON CONSTRUCTION	)
	INC., DUO FAST CORPORATION, DU-TONE	)
19	CORP., HAROLD EGAN, ERCO HOUSEWARE	)
	CO., EL-PAC, INC., EMBOSOGRAPH DIS-	)
20	PLAY MFG. CO., ESS RAY ENAMELING, INC.,	)
	ETHICON, INC., FELT PRODUCTS MFG. CO.,	)
21	FLINT INK CORP., FURNAS ELECTRIC	)
	CO., GEARMASTER DIVISION, EMERSON	)
22	ELECTRIC, THE GILBERT & BENNETT	)
	MFG. CO., GLD LIQUID DISPOSAL,	)
23	HENRY PRATT COMPANY, J.M. HUBER	)
	CORPORATION, HYDRITE CHEMICAL CO.,	)
24	INTAGLIO CYLINDER SERVICE, INC.,	)

1	JOHNSON & JOHNSON, J & S TIN MILL	)
	PRODUCTS, KNAACK MFG. CO., LANSING	)
2	SERVICE CORPORATION, LAUTTER	)
	CHEMICAL, LIQUID DYNAMICS,	)
3	LIQUID WASTE, INCORPORATED,	)
	STEVE HARTEL, MASONITE CORPO-	)
4	RATION, McWHARTER CHEMICAL CO.,	)
	METAL RECLAIMING CORPORATION,	)
5	METROPOLITAN CIRCUITS,	)
	MIDWEST RECYCLING COMPANY, MONTGOMERY	)
6	TANK LINES, MORTON THIOKOL INC.,	)
	MR. FRANK, INC., NAMSCO, INC.,	)
7	NATIONAL CAN CORPORATION, NAZ-DAR CO.,	)
	NUCLEAP DATA, INC., PPG INDUSTRIES,	)
8	INC., PASLODE COMPANY, PIERCE & STEVENS	)
	CHEMICAL CORP., PIONEER PAINT PRODUCTS,	)
9	PREMIER PAINT CO., PYLE-NATIONAL CO.,	)
	R-LITE, REFLECTOR HARDWARE CORP.,	)
10	REGAL TUBE, RELIANCE UNIVERSAL, INC.,	)
	RICHARDSON GRAPHICS, JOHN ROSCO,	)
11	ROZEMA INDUSTRIAL WASTE, ST. CHARLES	)
	MANUFACTURING, SCHOLLE CORPORATION,	)
12	SCRAP HAULERS, SHERWIN WILLIAMS	)
	COMPANY, SHELD COATINGS, INC.,	)
13	SIZE CONTROL COMPANY, SKIL CORPORA-	)
	TION, SPECIAL COATINGS CO.,	)
14	SOUTHERN CALIFORNIA CHEMICAL,	)
	SPECIALTY COATINGS, INC.,	)
15	SPOTNAILS, INC., STAR TRUCKING, STERN	)
	ELECTRONICS, INC., JOE STRAUSNICK,	)
16	STUART CHEMICAL & PLANT, INC.,	)
	SUMNER & MACE, SUN CHEMICAL,	)
17	SYNTECH WASTE TREATMENT CENTER,	)
	T.R.C., TERPACK, INC., ALFRED TENNY,	)
18	THIELE-ENGDAHL, INC., THOMPSON	)
	CHEMICALS, TIFFT CHEMICALS,	)
19	TOUNEY DISPOSAL, TRIPLE S. ETCHANTS,	)
	UNIROYAL, INC., UNITED RESIN AD-	)
20	RESIVES, INC., U.S. ENVELOPE, U.S.	)
	SCRAP AND DRUM, U.S. STEEL CORP., UNI-	)
21	VERSAL RESEARCH LABORATORIES, INC.,	)
	UNIVERSAL TOOL & STAMPING COMPANY,	)
22	VANDER MOULEN DISPOSAL, VELSICOL	)
	CHEMICAL CORP., VICTOR GASKET	)
23	DIVISION OF DANA CORPORATION,	)
	WARNER ELECTRIC BRAKE & CLUCH CO.,	)
24	WARWICK CHEMICAL, WASTE RESEARCH &	)

1 RECYCLING, XEROX CORPORATION, and )  
2 other unidentified persons, )  
3 Third-Party Defendants. )

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9 DEPOSITION OF  
10 RICHARD E. BOICE

11 July 11, 1990  
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The continued deposition of RICHARD EDWIN  
BOICE, called for examination by the Defendants,  
pursuant to notice and pursuant to the provisions  
of the Federal Rules of Civil Procedure of the  
United States District Courts, pertaining to the  
taking of depositions for the purpose of  
discovery, taken before Arnold M. Goldstine, a  
Notary Public and Certified Shorthand Reporter  
within and for the County of Cook and State of  
Illinois, at 227 West Monroe Street, on July 11,  
1990, commencing at the hour of 1:45 o'clock p.m.

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APPEARANCES:

Mr. Alan S. Tenenbaum and  
Mr. Lenoard M. Gelman  
Trial Attorney  
Environmental Enforcement Section  
Land & Natural Resources Division  
U.S. Department of Justice  
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Washington, D. C. 20044

-and-

Mr. Michael R. Berman  
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U.S. Environmental Protection Agency  
Region V  
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Chicago, Illinois 60604

-and-

Peter W. Moore  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region V  
Office of Regional Counsel  
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Chicago, Illinois 60604

appeared on behalf of Plaintiff,  
United States of America;

Ms. Anne M. Beckert  
Ross & Hardies  
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Chicago, Illinois 60601-7567

appeared on behalf of Ashland  
Chemical Company;

1                   **APPEARANCES (CONTINUED):**

2  
3                   Mr. Christopher A. Zeale  
4                   Wildman, Harrold, Allen & Dixon  
5                   225 West Wacker Drive  
6                   Chicago, Illinois 60606-1220

7  
8                   appeared on behalf of  
9                   Penn Central Corporation;

10                  Mr. Robert M. Olian  
11                  Sidley & Austin  
12                  One First National Plaza  
13                  Chicago, Illinois 60603

14                  appeared on behalf of  
15                  Pre Finish Metals, Inc.;

16                  Ms. Lisa Anderson  
17                  Gardner, Carton & Douglas  
18                  Quaker Tower  
19                  321 North Clark Street  
20                  Chicago, Illinois 60610-4795

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22                  Desoto, Inc.;

23                  Mr. Joseph V. Karaganis,  
24                  Ms. Ellen Lois Zisook  
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                  appeared on behalf of  
                  American Can Company, Inc.;

1                   **APPEARANCES (CONTINUED):**

2  
3                   Mr. James T. J. Keating  
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10                   Mr. Edward J. Leahy  
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14                               appeared on behalf of  
15                               Scholle Corp.;

16                   Mr. David S. Finch and  
17                   Mr. Harvey M. Sheldon  
18                   McDermott, Will & Emery  
19                   227 West Monroe Street  
20                   Chicago, Illinois 60605-5096

21                   Mr. Richard S. VanRheenen  
22                   Cromer, Eaglesfield & Maher, P.A.  
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                    Indianapolis, Indiana 46225

                              appeared on behalf of  
                              J & S Tin Mill Products Company,  
                              Inc., et al.;

1       **APPEARANCES (CONTINUED):**

2  
3               Mr. Bradley L. Williams  
4               Ice, Miller, Donadio & Ryan  
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8                       appeared on behalf of  
9                       Indiana Department of Highways.  
10  
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1 MR. FINCH: Back on the record, please.

2 Q. Before we went on our lunch break, I  
3 believe the United States volunteered to bring  
4 over the administrative record or portions of  
5 it.

6 There are documents that may be  
7 contained within the record that were  
8 identified by Mr. Boice as likely to refresh  
9 his recollection on a number of points where he  
10 said his recollection needs to be refreshed  
11 before he can testify further.

12 What I would like to do now is see if  
13 we can marshal together those documents, at  
14 least one document that may or may not be  
15 within the boxes containing the record that was  
16 identified by Mr. Boice as in my possession  
17 now, so we can just use my copy if you want.  
18 And it may be useful after we get those  
19 documents together to resume questioning with  
20 them being available for Mr. Boice's review.

21 First of all, I believe Mr. Boice  
22 testified that copies of the comments made by  
23 the defendants to the administrative order  
24 would help refresh his recollection as to

1 positions taken by the defendants on the  
2 effectiveness of soil solidification.

3 I would ask that the documents that  
4 Mr. Boice was alluding to be pulled from the  
5 record, so that we can make copies of them  
6 under government supervision so that Mr. Boice  
7 will have them available.

8 A. I think those are very voluminous  
9 documents. It would take me hours to go  
10 through them.

11 As far as copying, these are documents  
12 you sent to us or the defendants sent to us.  
13 So they are available to the defendants.

14 MR. TENENBAUM: Are you just talking about  
15 the ERM comment or are you talking about  
16 something else?

17 MR. FINCH: We asked Mr. Boice some  
18 questions about his understanding of the  
19 defendant's position on the effectiveness of  
20 soil solidification.

21 Mr. Boice said that he remembers  
22 certain things. My understanding from his  
23 testimony was that he doesn't remember much,  
24 but that his recollection of his understanding

1 of defendants' position on this issue would be  
2 refreshed by reviewing comments that were  
3 submitted by defendants.

4 I don't know specifically what  
5 comments will refresh his recollection.  
6 Perhaps Mr. Boice knows that.

7 MR. TENENBAUM: I don't think that -- I  
8 don't think --

9 I would suggest that we allow the  
10 witness to see if his recollection is refreshed  
11 by the responses to the comments that you  
12 marked as an exhibit before during the  
13 deposition, and by the witnesses looking at  
14 ERM's comment.

15 There are just too many documents to  
16 him to have him review the documents. If you  
17 want him to review Standard T's comment, maybe  
18 that will do it.

19 MR. PINCH: That is fair.

20 Why don't we start with Exhibit 50, I  
21 believe it is, then we can go into ERM's  
22 comments if he needs to. If that doesn't work,  
23 we will just see where we are at.

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RICHARD BOICE,  
having been previously duly sworn,  
was examined and testified further as follows:  
DIRECT EXAMINATION  
(CONTINUED)  
BY MR. FINCK:  
Q. Before the lunch break, Mr. Boice, I  
handed you what has been marked for  
identification as Boice Deposition Exhibit 50,  
and I will ask you if you recognize the  
document?  
A. Yes.  
Q. What is it?  
A. It is a responses of the US  
Environmental Protection Agency to comments  
from respondents on Midco I and II unilateral  
orders issued on November 15, 1989.  
Q. All right.  
Is that a document that you ever saw  
before today?  
A. Yes.  
Q. In what connection did you see it?  
MR. TENENBAUM: Can we do this in a way --  
I don't want any probing of the creation of the

1           decisional document.

2           MR. FINCH: I am not asking for it. I just  
3           want to lay a foundation so that the document  
4           can properly be used. I want to lay a  
5           foundation so the document can be properly used  
6           as a refreshment document.

7                   And it can't refresh his recollection  
8           if he never saw it before, or if he didn't see  
9           it in a context connected with an original  
10          sending.

11                   If you are willing to waive all of  
12          that foundation, I won't ask the questions.

13          MR. TENENBAUM: What specifically do you  
14          want me to waive, that he is familiar with it?

15          MR. FINCH: I want to know if the witness  
16          is familiar with the document, that it was a  
17          document that he was familiar with at the time  
18          that it was prepared or at some subsequent  
19          point that he can testify to, so that it does  
20          in fact reflect the understanding he had at the  
21          time about the issues stated therein.

22                   If you will stipulate to that, I won't  
23          ask any foundation questions.

24          MR. TENENBAUM: Would it be sufficient to

1 say that he is familiar with parts of it. Is  
2 there any particular part? He may not be  
3 familiar with the whole thing. Is there any  
4 particular part you want him to look at?

5 MR. FINCH: I don't know to what extent  
6 this document will refresh his recollection, so  
7 I don't know what part he needs to be familiar  
8 with in order for the foundation to be laid.

9 MR. TENENBAUM: Can we ask him what part  
10 would? Then you can lay the foundation for  
11 that part.

12 MR. FINCH: Sure.

13 Q. Is there any portion of this document,  
14 Mr. Boice, that you are familiar with?

15 MR. TENENBAUM: I thought that would  
16 refresh his recollection.

17 MR. FINCH: We will get there. I am trying  
18 to do this piece by piece.

19 MR. TENENBAUM: Yes. But, I have to  
20 protect the decisional process here. I am not  
21 going to allow --

22 MR. FINCH: I am not going to ask Mr. Boice  
23 what role, if any, the document played in the  
24 decisional process. I am not going to ask him

1       if he ever relied on it in connection with  
2       their decisional process.

3               I am not going to ask him if the  
4       document was used in the decisional process by  
5       other persons.

6               All I want to do is lay a foundation  
7       as to the connection between this witness and  
8       this document, so that this document can be  
9       used as a refreshment document within the  
10      rules.

11              MR. TENENBAUM: Wouldn't the efficient way  
12      to do that be for you to ask the witness if any  
13      portion of this document would refresh his  
14      recollection with respect to your earlier  
15      question?

16              MR. FINCH: That sort of leap frogs a  
17      little.

18              MR. TENENBAUM: Once we have that, we can  
19      ask if he is familiar with them, and whether he  
20      was familiar with them at the time the document  
21      was issued.

22              MR. FINCH: We can do it that way if you  
23      want.

24              Q.     Mr. Boice, does any portion of this

1 document refresh your recollection as to the  
2 position the defendants took on the  
3 effectiveness of soil solidification as a soil  
4 remedy?

5 A. Yes.

6 Q. Okay.

7 What portions of the document refresh  
8 your recollection in that connection?

9 A. In part 3, the first page. USEPA is  
10 responding to an issue brought up by the  
11 defendants, including a memo from ERM,  
12 regarding the selection of solidification  
13 stabilization as part of the -- or indicating  
14 that the selection of solidification  
15 stabilization as part of the remedial action at  
16 the site is inappropriate and deep-well  
17 injection is not necessary.

18 Q. All right.

19 A. This document is in the administrative  
20 record for the unilateral administrative order.

21 Q. Okay.

22 Before we go further, I just want to  
23 ask you a couple questions about this document,  
24 and I won't go any further than that.



1                   Exhibit No. 50, was this a document  
2                   that was in whole or in part prepared by you?

3                   MR. TENENBAUM: Wait.

4                   Can we avoid this by just stipulating  
5                   that he is familiar with the document when it  
6                   was issued?

7                   MR. FINCH: We can go off the record for  
8                   second.

9                   (Discussion had off the record.)

10                  Back on record.

11                  As to Exhibit 50, I'm not going to ask  
12                  further foundational questions. I understand  
13                  from Mr. Tenenbaum that he will not contest the  
14                  use of this exhibit as a refreshment document  
15                  to the extent that it does, in fact, refresh  
16                  the witness' recollection.

17                  And I am not taking the position that  
18                  in so doing the government is waiving any of  
19                  the objections or privileges it has asserted in  
20                  connection with this document or otherwise.

21                  MR. TENENBAUM: Or other objections.

22                  MR. FINCH: Other objections in this case,  
23                  is that okay?

24                  MR. TENENBAUM: Including the objections to

1           this line of questioning?

2           MR. FINCH: That's right.

3           MR. TENENBAUM: Correct.

4           MR. FINCH: All right. Off the record.

5                   (Discussion had off the record.)

6                   Back on the record, please.

7                   Mr. Boice, you just pointed to  
8 something in Exhibit 50 that refreshed your  
9 recollection. Because the pages of this  
10 exhibit are not numbered, if you could help me  
11 locate where you are.

12           A. On Part III.

13           Q. All right.

14           A. Issue 1, response 1.

15           Q. All right.

16                   Part III, issue 1, response 1; is that  
17 correct?

18           A. That's correct.

19           Q. All right.

20                   You are saying that the statement of  
21 issue 1 near the top of the first page of Part  
22 III refreshes your recollection or is it  
23 something else on that page that refreshes your  
24 recollection?

1           A.   Primarily the response.

2           O.   Okay.

3                   How does it refresh your recollection?

4           A.   Well, in the second two paragraphs it  
5 states as follows:

6                               "Apparently, ERM's  
7                   assessment of the  
8                   effectiveness of the  
9                   solidification/stabilization  
10                  has varied. In a meeting on  
11                  the feasibility study on  
12                  January 15, 1988, Dr. Roy  
13                  Ball of ERM advocated the  
14                  effectiveness of that  
15                  solidification/stabilization  
16                  and he continued to advocate  
17                  the effectiveness of  
18                  solidification/stabilization  
19                  during the feasibility study  
20                  when EPA was also evaluating  
21                  the use of incineration or  
22                  in-situ vitrification for the  
23                  soil treatment option.  
24                  However, in the May 19, 1989

1 public comment document for  
2 the Midco Steering Committee,  
3 ERM argued against  
4 solidification/stabilization,  
5 that  
6 solidification/stabilization  
7 is not cost effective and  
8 expressed concern that  
9 solidification/stabilization  
10 may not immobilize all  
11 hazardous constituents.

12 ERM has also been  
13 inconsistent about the  
14 potential acceptability to  
15 IDEM and EPA of the discharge  
16 to the Grand Calumet River or  
17 to a POTW. In a meeting  
18 dated January 15, 1988, ERM  
19 indicated that they would  
20 look further into the  
21 potential for a POTW  
22 discharge. Later in a letter  
23 from ERM dated February 12,  
24 1988, ERM concluded that

1                   quote, 'the only available  
2                   discharge point for  
3                   significant quantities of  
4                   saline ground water at both  
5                   sites is a deep well.'"

6                   Q.    Is it your recollection now having  
7                   reviewed these two paragraphs that the  
8                   recitation of ERM's position in those  
9                   paragraphs is correct?

10                  MR. TENENBAUM:  I am sorry.  What was the  
11                  question?  Can you read that back?

12                  MR. FINCH:  Let me break that up and  
13                  withdraw it.

14                  Q.    Before you read those two paragraphs,  
15                  your recollection of the position of defendants  
16                  on the effectiveness of soil solidification  
17                  needed to be refreshed; is that correct?

18                  A.    Well, I told you a number of things  
19                  about it.  And you wanted to know more detail.  
20                  So, yes, I am refreshing my memory, if you want  
21                  more details on the -- on that, what ERM's  
22                  positions were and what the defendants'  
23                  positions were at that time.

24                  Q.    And the materials that you just quoted

1 on the record refreshed your recollection as to  
2 that?

3 A. Yes. Although it seems to state about  
4 the same thing I had previously stated  
5 regarding ERM.

6 Q. Well, maybe it did and maybe it  
7 didn't.

8 I am just asking whether it refreshed  
9 your recollection on points that needed  
10 refreshing that you couldn't remember?

11 A. Well, I don't say it helps me remember  
12 everything. It is some additional information.

13 Q. But it helps you remember some things?

14 A. Yes.

15 Q. Is there any aspect of ERM's position  
16 on the effectiveness of soil solidification or  
17 the position of the defendant group as a whole  
18 about which you are still uncertain even though  
19 you have read these two paragraphs?

20 A. There is always more you can learn if  
21 you read the documents again. My memory isn't  
22 perfect.

23 Q. Okay.

24 Now, you just quoted two paragraphs

1       verbatim on the record. Is it your  
2       recollection now that the statements in those  
3       two paragraphs are correct?

4           A.    Yes.

5           Q.    You quoted in the record the following  
6       sentence, quote:

7                               "However, in the  
8                               May 19, 1999 public comment  
9                               document for the MSC, ERM  
10                              argued that soil  
11                              solidification is not cost  
12                              effective and expressed  
13                              concern that soil  
14                              solidification may not  
15                              immobilize all hazardous  
16                              constituents."

17                   Do you see that sentence?

18           A.    Yes.

19           Q.    Do you know specifically what document  
20       is alluded to in that sentence as to a public  
21       comment document?

22           A.    Yes.

23           MR. TENENBAUM: Same continuing objection.

24           MR. FINCH: Okay.

1 Q. Do you have a copy of that document  
2 here today?

3 A. Yes.

4 Q. Would you retrieve that for me?

5 MR. KARAGANIS: Which document is that?

6 MR. FINCH: I guess it is the May 19, 1989  
7 public comment document.

8 MR. KARAGANIS: Thank you.

9 A. Okay, I have got it.

10 BY MR. FINCH:

11 Q. You have it?

12 A. Yes.

13 Q. What I would like to do is with  
14 counsel's permission is have a xerox copy of  
15 that single document made so that it can be  
16 marked as an exhibit.

17 Is that acceptable?

18 MR. TENENBAUM: To copy, yes.

19 MR. FINCH: Yes. We will have somebody  
20 make the copy in the presence of a government  
21 officer.

22 (Whereupon a short recess was had.)

23 Q. All right. Back on the record.

24 We have made a xerox copy of the



1        comments in the USEPA proposed plan for  
2        remediation of the Midco I and Midco II sites  
3        dated May 18, 1989. A document that was part  
4        of the administrative record.

5                I will ask the reporter to mark this  
6        as Exhibit No. 51 for identification. We have  
7        made one copy. The original of which remains  
8        in the record and is available for Mr. Boice's  
9        review.

10                (The document above-referred to  
11                was marked Boice Deposition  
12                Exhibit No. 51 for identification.)

13                Okay. I will call your attention, Mr.  
14        Boice, to this document as it appears in the  
15        record. Do you have that?

16                A.    Yes.

17                Q.    Okay.

18                Now, could you tell me how the comment  
19        contained in Exhibit No. 51 show any variance  
20        in ERM's assessment of the effectiveness of  
21        soil solidification?

22                A.    On page 6, first paragraph it says:

23                        "The effectiveness

24                        of solidification to

1 immobilize all contaminants  
2 of concern must also be  
3 considered. Previous  
4 attempts at evaluating  
5 solidification processes  
6 have shown that arsenic,  
7 chromium, lead, phenols and  
8 phthalates (all  
9 contaminants of concern)  
10 may not be satisfactorily  
11 immobilized by  
12 solidification."

13 Q. How is that a variance in ERM's  
14 assessment of the effectiveness of soil  
15 solidification?

16 A. Well, previously they had by  
17 submitting the feasibility study without  
18 pointing out any problems with or weaknesses in  
19 solidification, although, well, they had  
20 submitted the feasibility study without any  
21 indication of any weaknesses in the  
22 solidification process.

23 And then later they emphasized these  
24 weaknesses. That is, basically they go from

1 promoting it, to emphasizing the weaknesses of  
2 the solidification process.

3 Q. So you are saying at some point they  
4 actually promoted the effectiveness of soil  
5 solidification?

6 A. Yes.

7 Q. And this was during a meeting on  
8 January 15, 1988?

9 A. That's the first time they promoted  
10 it. Yes.

11 And then it continued, for example,  
12 when we, EPA, expressed concern that volatile  
13 organic compounds may not be effectively  
14 treated by solidification/stabilization, they  
15 came up with the idea of adding in-situ vapor  
16 extraction to the solidification/stabilization  
17 process.

18 Then throughout the whole process they  
19 never emphasized any weaknesses or  
20 disadvantages to solidification. Although, I  
21 should say that the Agency was already aware of  
22 these potential problems with solidification --

23 Q. You mean --

24 A. -- that they noted there.

1 Q. So, the Agency was aware of the  
2 potential problems identified on page 6 of  
3 Exhibit 51?

4 A. That's correct.

5 Q. You say aware of the potential  
6 problems, are you saying --

7 A. I should say weaknesses.

8 Q. Weaknesses.

9 Are you saying that the Agency agreed  
10 with ERM's assessment that solidification may  
11 not be able to immobilize all contaminants of  
12 concern?

13 MR. TENENBAUM: Same continuing objection.

14 A. We agreed with that. Yes.

15 BY MR. FINCH:

16 Q. Do you still agree with it?

17 A. Yes.

18 MR. TENENBAUM: Could you read back the  
19 question and answer please?

20 (The record was read.)

21 BY MR. FINCH:

22 Q. Why, if you know, did Roy Ball  
23 advocate soil solidification beginning in a  
24 meeting on January 15, 1988?

1 MR. TENENBAUM: Objection.

2 A. I can only conjecture as to why he did  
3 that.

4 BY MR. FINCH:

5 Q. Well, you are arguing there is a  
6 variance in position. You are stating that his  
7 position as of May 19, 1989 is that stated in  
8 Exhibit 51, and the position was different  
9 about a year and a-half earlier, on January 15,  
10 1988.

11 A. Yes. Plus throughout the feasibility  
12 study process.

13 Q. Did Mr. Ball ever tell you why he took  
14 the position he did on January 15, 1988 and  
15 later changed it?

16 A. No, he didn't.

17 Q. Do you know whether ERN came up with  
18 the idea of soil solidification in connection  
19 with Midco I and Midco II to begin with?

20 A. As far as I know, they are the first  
21 ones, Roy Ball was the first one to come up  
22 with that idea.

23 Q. Did he come up with the idea in  
24 response to a government request for some form

1 of soil treatment or something?

2 A. No, it was in the original document  
3 submitted for the feasibility study.  
4 Solidification/stabilization was one of the  
5 original --

6 Okay. I guess I have to correct  
7 myself, in that there was a screening document  
8 submitted first and an array of alternatives  
9 document, that included  
10 solidification/stabilization as one of the  
11 treatment methods.

12 Q. A screening document?

13 A. There was a document that listed a  
14 whole range of alternatives, then another one  
15 that did some preliminary screening.

16 Q. So there are two documents you are  
17 saying?

18 A. Yes. So Dames & Moore included  
19 solidification/stabilization in those  
20 documents.

21 Q. Is there a title for these documents  
22 or description that is commonly used?

23 A. The later one was called the  
24 preliminary screening or the array of

1 alternatives document.

2 Q. That's the second one?

3 A. The second one that came out I think  
4 in November 1987.

5 Q. Array of alternatives?

6 A. Array of alternatives document for  
7 Midco I, and there was also one for Midco II.  
8 And the earlier one I think was called the  
9 preliminary negotiations document.

10 Q. Do you know what the date of that  
11 document was, roughly?

12 A. I think it was roughly September 1987.

13 Q. And soil solidification was identified  
14 in one or both of these documents?

15 A. Yes.

16 Q. And Dames & Moore prepared both of  
17 these documents?

18 A. Yes.

19 Q. Under whose direction and supervision?

20 A. Under the consent decree.

21 Q. Did Dames & Moore report to anybody  
22 over the form, nature or content of these  
23 documents?

24 MR. TENENBAUM: What do you mean by report

1 to?

2 MR. FINCH: Whether they were supervised by  
3 anybody in the preparation of these documents.

4 A. Well --

5 MR. TENENBAUM: I would object to the word  
6 supervised. I am not sure of the distinction  
7 between supervise, oversight. I don't know  
8 what you are trying to get at.

9 MR. FINCH: I am struggling here.

10 Q. Did Dames & Moore work with the Midco  
11 Steering Committee in the preparation of either  
12 of these documents?

13 MR. TENENBAUM: If you know.

14 A. Well, ERM was overall in charge of the  
15 project. So I presume it was with their  
16 oversight.

17 BY MR. FINCH:

18 Q. At what time?

19 A. What?

20 Q. They were in charge of the project in  
21 1987?

22 A. Yes.

23 Q. So --

24 A. Yes.



1 Q. Okay.

2 A. I don't know whether -- what the Midco  
3 Steering Committee had on that.

4 Q. Were these documents submitted to the  
5 government by the steering committee, by Dames  
6 & Moore directly, by ERM, by someone else, do  
7 you recall?

8 A. I'm not sure. I don't remember.

9 Q. And which of these documents  
10 identified soil solidification as a possible  
11 remedy for the Midco sites?

12 A. Both of them. Or I should say all  
13 four. There was two for Midco I and two for  
14 Midco II.

15 Q. So ERM was not the first to propose to  
16 your recollection soil solidification as a  
17 remedy?

18 MR. TENENBAUM: Objection. I don't know  
19 what use you are using -- the word proposed is  
20 misleading in light of the line of questioning.

21 MR. PINCH: I withdraw the question.

22 Q. ERM was not the first to mention soil  
23 solidification in the context of possible  
24 remedies for the Midco sites?

1           A.    No.

2           Q.    All right.

3                    You have testified that you currently  
4 agree with the observation on page 6 of Exhibit  
5 51 that the effectiveness of solidification to  
6 immobilize all contaminants of concern must  
7 also be considered.

8                    Do you know whether at the time ERM  
9 made this statement there was any additional  
10 remedy under consideration that would address  
11 the mobility of these contaminants?

12                   I am trying to get at the proposed  
13 inconsistency or variance between ERM's  
14 two-positions here.

15           A.    What do you mean by under  
16 consideration?

17           Q.    I don't know.

18                   What about pump and flush. Was that  
19 something that was being discussed by ERM?

20           A.    Yes.

21           Q.    Did ERM take a position on the ability  
22 of pump and flush to treat contaminants that  
23 would not be immobilized by soil  
24 solidification?

1 MR. TENENBAUM: Same continuing objection.

2 MR. KEATING: Are you talking about in the  
3 report? I don't know what you are talking  
4 about now.

5 MR. FINCH: I am just talking about in any  
6 communication that ERM may have made at the  
7 time.

8 A. Would you repeat the question?

9 MR. FINCH: I will ask the reporter to  
10 repeat it. He will say it more accurately than  
11 I.

12 A. Okay.

13 (The record was read.)

14 I don't think they took a position on  
15 those specific chemicals by themselves, no.

16 Q. Do you know if they have ever taken a  
17 position on that?

18 A. No. Because we don't -- haven't done  
19 treatability study, so we don't know which  
20 chemicals will not be immobilized.

21 Q. How about chemicals that would be  
22 immobilized, do you know what ERM's position is  
23 on the role that pump and flush might play in  
24 treating those chemicals?

1           MR. TENENBAUM: I am a little bit confused  
2 also as to what time period you are asking  
3 about when you say ERM's position.

4           MR. FINCH: Okay. I think that is a fair  
5 comment.

6           Why don't we start with the time of  
7 the alleged variance, which would be as of May  
8 19, 1989. Then we will talk about today, as of  
9 this point.

10          MR. TENENBAUM: It may be off on the  
11 earlier time, too.

12          MR. FINCH: That's fair, too.

13          Why don't we start with prior to the  
14 time of the alleged variance in ERM's  
15 assessment of the effectiveness of soil  
16 solidification, at the time of that variance  
17 and then today.

18          MR. TENENBAUM: Subject to my continuing  
19 objection, if you know the answer as to what  
20 ERM's position was, you can tell him.

21          BY MR. FINCH:

22          Q. Do you know?

23          A. Okay.

24          It is contained in this document,

1           basically.

2           MR. TENENBAUM: As of which date?

3           A. Comments on USEPA proposed plan for  
4 remediation of the Midco I and II sites, May  
5 19, 1989.

6           So I would simply be trying to  
7 summarize what they are saying clearly --  
8 fairly clearly in this document.

9           And basically the position was that  
10 there wouldn't be a significant reduction in  
11 the risk by solidifying, conducting  
12 solidification compared to pumping and treating  
13 the ground water.

14          BY MR. FINCH:

15          Q. So their position was that that  
16 pumping and flushing or pumping and treating  
17 would address all of the contaminants that  
18 would be immobilized by solidification?

19          A. Well, I don't think they put it that  
20 way.

21               I think they say that overall it is  
22 just as protective. Their position is that  
23 overall it is just as protective as  
24 solidification with pumping and treating the

1 ground water.

2 Q. Were you aware of that at the time  
3 that the supposed variance of ERM's assessment  
4 of the effectiveness of soil solidification  
5 first became clear?

6 MR. TENENBAUM: Is your question whether  
7 they varied prior to this? Is that the  
8 question?

9 MR. FINCH: Well, there is an allegation in  
10 Exhibit 51 that there was a variance in ERM's  
11 assessment of the effectiveness of soil  
12 solidification.

13 And I am reading the statement in  
14 Exhibit 51 to make the time of the variance May  
15 19, 1989, when a public comment document --

16 A. I think you should -- it says,  
17 apparently EPA's assessment of the  
18 effectiveness of solidification/stabilization  
19 is at variance, what I was saying is it is  
20 apparently a change.

21 MR. TENENBAUM: The first reference here is  
22 not to the May 19th.

23 MR. FINCH: I understand that. The first  
24 one, I don't want to try to characterize what

1 the document says.

2 But, for the sake of speeding this  
3 along, it says that ERM took a position on  
4 January 15, 1988, then it took a different  
5 position on May 19, 1989. So the variance  
6 didn't occur until 1989 when it took the second  
7 position.

8 And what I am asking the witness is  
9 whether at the time that the variance occurred,  
10 on May 19, 1989, he was aware of the position  
11 ERM took on pump and treat and pump and flush.

12 A. Yes. Assuming their position is as  
13 described in this document.

14 Q. Which document are you referring to  
15 for the record?

16 A. The comments on the USRPA proposed  
17 plan dated May 19, 1989.

18 Q. That's Exhibit 51?

19 A. Yes.

20 Q. Do you disagree with their comments on  
21 pump and flush and pump and treat?

22 MR. TENENBAUM: Same continuing objection.

23 MR. FINCH: Fine.

24 A. Which specific comments are you

1 referring to.

2 Q. That it would effectively treat,  
3 immobilize the contaminants that would be  
4 immobilized by solidification.

5 MR. TENENBAUM: Objection.

6 A. That isn't what they are saying.

7 MR. TENENBAUM: Sorry.

8 MR. FINCH: I can answer your objection,  
9 Alan.

10 MR. TENENBAUM: How does that -- I mean,  
11 how does whether he agrees or disagrees relate  
12 to whether or not --

13 MR. FINCH: It would have an impact on  
14 whether he can plausibly characterize this  
15 supposed variation or variance in ERM's  
16 position on soil solidification as an element  
17 in an impression of bad faith.

18 It really goes to state of mind, and  
19 we are talking about what is admittedly a  
20 subjective response by the witness to the  
21 performance of ERM.

22 And I am not trying to examine  
23 anything that the witness did in connection  
24 with remedy selection, or any decision he may



1       have made as an EPA official. I am just trying  
2       to understand how he saw a variance in ERM's  
3       position.

4           MR. KEATING: If he says he thought it is a  
5       reasonable position, then how can he turn  
6       around and say somebody else is in bad faith by  
7       thinking the same thing. That is how the  
8       question goes.

9           MR. TENENBAUM: I see.

10           I think, though, I understand what you  
11       are trying to get at; but, I think you have  
12       strayed pretty much squarely into the area of  
13       this particular witness' opinion on remedy  
14       selection.

15           So I will allow him to answer only if  
16       everybody in the room stipulates that they will  
17       not try to use this for any purpose other than  
18       the bad faith issue, unless, of course, the  
19       court rules and you are entitled to take  
20       discovery on the remedy, on this remedy  
21       selection issue.

22           MR. FINCH: I am asking the question in the  
23       context of bad faith. I am not asking --

24           MR. TENENBAUM: I have to get a stipulation

1 from everyone in the room that they won't try  
2 to use it for another purpose.

3 MR. KARAGANIS: If somebody else tries to  
4 use it, you can object at that time.

5 MR. TENENBAUM: No.

6 I think the purpose of a direction not  
7 to answer on this type of question is to make  
8 sure that the waiver -- it is like waiving a  
9 privilege in a sense, it is analogous to that.

10 MR. FINCH: I will stipulate.

11 I am asking the questions here, nobody  
12 else is. It is our deposition at this stage  
13 and nobody else's.

14 And I will represent, first of all,  
15 that the questions are being asked in the  
16 context of bad faith; and, secondly, that  
17 Standard T will not assert any waiver of any  
18 privilege that you have asserted thus far in  
19 connection --

20 MR. TENENBAUM: I wasn't talking about a  
21 waiver. I understand that point.

22 I was talking about a different issue.  
23 And, that is, that a different kind of waiver  
24 issue, I guess. That is, if I allowed this

1 witness to answer on such a core,  
2 remedy-related question, then the witness'  
3 answer is going to appear in briefs or whatever  
4 else, notwithstanding that the court may  
5 disagree with your position on discovery into  
6 remedy-related issues.

7 I think we are on a peripheral point  
8 in terms of the bad faith issue. So unless I  
9 get a stipulation from everyone in the room, I  
10 am not going to allow him to answer.

11 MR. PINCH: If we are going to talk to  
12 everybody in the room, we will have to go off  
13 the record.

14 Maybe we can go off the record and  
15 talk to everyone in the room. But, I will  
16 propose on behalf of Standard T that this  
17 testimony not be used except in the context of  
18 bad faith or the impression of bad faith, to be  
19 more accurate, that this witness has stated for  
20 the record.

21 MR. TENENBAUM: Let's go off the record and  
22 see if anyone else has any problem with  
23 stipulating to that.

24 MR. FINCH: One thing has been pointed out

1 to me, an exception to that would be if the  
2 government's scope of review motion is denied.  
3 Then it is open season anyhow.

4 MR. TENENBAUM: Denied in this aspect of  
5 it, right.

6 A. How about people who aren't here?

7 MR. TENENBAUM: I think if everybody in the  
8 room will stipulate to it, and someone not here  
9 tries to deviate from what everybody in the  
10 room did, it is not going to be looked upon so  
11 kindly by the court.

12 On this question, I might be willing  
13 to live with it.

14 (Discussion had off the record.)

15 MR. FINCH: I tell you what, I am going to  
16 withdraw the question.

17 MR. TENENBAUM: All right.

18 BY MR. FINCH:

19 Q. I just want to understand some things  
20 about what has been testified so far.

21 You have testified, Mr. Boice, that  
22 you agree with the statement made by ERM on  
23 page 6 of Exhibit 51.

24 I want to know what you agree with and

1        what you don't, or what that testimony relates  
2        to and what it doesn't.

3                The second sentence of the second  
4        paragraph of page 6 of this exhibit reads, and  
5        I quote:

6                        "Because the  
7                        success of solidification  
8                        as a soil remediation  
9                        technology for the Midco  
10                      sites is uncertain,  
11                      alternatives 7 and 8 cannot  
12                      be considered cost  
13                      effective when measured  
14                      against alternatives 4A or  
15                      4C, which employ proven  
16                      technology and accomplish  
17                      essentially the same level  
18                      of risk reduction."

19                Now, I know you testified that you  
20        agree with the observation made by ERM on the  
21        effectiveness of soil solidification to  
22        immobilize all contaminants of concern.

23                What I am not clear about is whether  
24        that agreement extends to the sentence I just

1           quoted?

2           MR. TENENBAUM: Same continuing objection.

3           You may answer, to the extent you can.

4           A. No.

5           BY MR. FINCH:

6           Q. Is there anything you don't agree with  
7 in that sentence or do you not agree with the  
8 whole sentence?

9           A. Well, for one thing, the fact that the  
10 results or the success of solidification is  
11 uncertain indicates that we have to conduct a  
12 treatability study. So that is what we are  
13 doing.

14          Q. You don't agree with that?

15          A. What?

16          Q. Do you agree that the success of  
17 solidification is uncertain?

18          MR. TENENBAUM: The witness has indicated  
19 that he is not in agreement with this sentence.  
20 I thought that was the only basis for tying  
21 this into the bad faith issue.

22          MR. FINCH: What think I am getting at,  
23 Alan, is that there are at least four, maybe  
24 six assertions of fact in the sentence. I just

1 want to know which ones he agrees with and  
2 which ones he doesn't.

3 MR. TENENBAUM: He hasn't said he agreed  
4 with any of them in that sentence.

5 MR. FINCH: If he doesn't agree with any of  
6 them, I just want him to so testify.

7 MR. TENENBAUM: Why don't we, if I could  
8 suggest, ask him if he agrees with any.

9 Subject to our objections, I will let  
10 him answer as to whether he agrees with any  
11 parts of it.

12 BY MR. FINCH:

13 Q. Okay.

14 Do you agree with any part of that  
15 sentence?

16 Actually, let me withdraw that for a  
17 second. I propose that I break the sentence  
18 down into parts because my concept of what is a  
19 part of a sentence and his concept of what is a  
20 part and your concept may be different. We may  
21 not be talking about the same thing.

22 MR. TENENBAUM: All right.

23 If you want to ask him subject to our  
24 objection whether he agrees with parts of the

1 sentence, I will let him answer yes or no.  
2 But, I am not going to allow him further than  
3 that.

4 BY MR. FINCH:

5 Q. Let's start with the first assertion  
6 which I see is the first clause, "Because the  
7 success of solidification as a soil remediation  
8 technology for the Midco sites is uncertain."

9 Do you agree or disagree with that  
10 clause.

11 MR. TENENBAUM: Same continuing objection.

12 A. We agree with that.

13 BY MR. FINCH:

14 Q. You do agree with that. Okay.

15 The next assertion is that,  
16 "alternatives 7 and 8 can not be considered  
17 cost effective when measured against  
18 alternatives 4A and 4C."

19 Do you agree with that?

20 MR. TENENBAUM: Same continuing objection.

21 A. No.

22 BY MR. FINCH:

23 Q. You do not agree with that?

24 A. No.



1 Q. The next assertion is do alternatives  
2 4A and 4C employ a proven technology?

3 MR. TENENBAUM: Same continuing objection.

4 A. It is a proven technology. Although,  
5 it is not for soils treatment, it is for ground  
6 water treatment.

7 BY MR. FINCH:

8 Q. Just for ground water treatment?

9 A. It is proven technology for ground  
10 water treatment.

11 Q. But not for soil treatment?

12 A. Right.

13 Q. And I guess the next assertion is that  
14 alternatives 4A and 4C accomplish the same  
15 level of risk reduction.

16 MR. TENENBAUM: Same continuing objection.

17 A. I disagree.

18 BY MR. FINCH:

19 Q. Why do you disagree with that?

20 MR. TENENBAUM: Well, the only relevance to  
21 this is whether he agrees. If he agrees, then  
22 you might have some relevance to bad faith.  
23 That is why I let him answer yes or no.

24 He said he doesn't agree. So, I don't

1       see -- you are at a core remedy issue. You are  
2       asking this witness' personal opinion as to  
3       some of the alternatives. That gets to the  
4       core of the remedy.

5               MR. FINCH: I want to avoid doing that.  
6       Let me try and see if I can avoid doing it,  
7       before I abandon this line of questioning.

8               Q. Is there anything -- I don't want to  
9       know what you think, Mr. Roice. I don't want  
10      to know your opinion about why you disagree  
11      with the assertion that alternatives 4A or 4C  
12      accomplish essentially the same level of risk  
13      reduction.

14              But, is there anything that the  
15      defendants or ERM said or did that created that  
16      disagreement?

17              MR. TENENBAUM: Same continuing objection.

18              A. Yes.

19              They conducted the remedial  
20      investigation feasibility study, including the  
21      risk assessments for them, and the evaluation  
22      of alternatives.

23              BY MR. FINCH:

24              Q. And was there anything that the

1 defendant or ERM did that is contained in the  
2 record, or otherwise for that matter, that is  
3 inconsistent with the assertion that  
4 alternatives 4A or 4C accomplish essentially  
5 the same level of risk reduction?

6 MR. TENENBAUM: Same continuing objection.

7 A. Yes.

8 BY MR. FINCH:

9 Q. And what is that?

10 A. They prepared the remedial  
11 investigation feasibility study.

12 Q. That is inconsistent with that  
13 assertion?

14 A. Yes.

15 There is information in there that is  
16 inconsistent with that assertion.

17 Q. What information is that?

18 A. I would have to get the documents out  
19 and the reason.

20 Q. Before I move on to another subject, I  
21 would like to give you a chance to do that.

22 Why don't we go off the record and we  
23 will see how long it takes. If it is a lengthy  
24 process, we will talk about deferring it. But,

1 if it can be done fairly quickly, I would like  
2 to do that now.

3 MR. TENENBAUM: Okay.

4 (A short recess was taken.)

5 MR. FINCH: On the record, please.

6 We have had an off-the-record  
7 discussion of additional dates on which the  
8 Boice deposition could continue following the  
9 close of testimony today.

10 I have stated for the record that I am  
11 available to continue my questioning on  
12 Thursday, July 12th; Friday, July 13th;  
13 Saturday, July 14th; Monday, July 16th, and  
14 Tuesday, July 17th.

15 I also want the record to reflect that  
16 we need at least two days to complete our  
17 questioning beyond today. That if given two  
18 days, I will be certain to complete that  
19 testimony, however.

20 That is the only thing I want to state  
21 for the record at this point.

22 MR. KARAGANIS: Joseph Karaganis for  
23 American Can.

24 I would like to state that I am

1 available Thursday and Friday of this week,  
2 Saturday of this week, if need be, as well as  
3 Tuesday, Wednesday and Thursday of the  
4 following week to take my portion of the  
5 deposition of Mr. Boice.

6 I have deferred to my co-counsel in  
7 conducting examination thus far. I took some  
8 preliminary examination with respect to the  
9 contents of the record and deferred substantive  
10 questioning to my co-counsel, so that they  
11 would have an initial opportunity.

12 I will need two days of examination of  
13 Mr. Boice.

14 Lisa indicated for Desoto that Mr.  
15 Port, her partner, would require some  
16 additional time and that he would make his  
17 schedule available, including Saturday, the  
18 14th, if need be, and days next week.

19 MS. ANDERSON: Desoto would prefer that --  
20 next week is really tentative for Mr. Port's  
21 schedule, and that if need be we could possibly  
22 agree to a date beyond the discovery date to  
23 continue this deposition, due to the many  
24 depositions that appear to be scheduled next

1 week, which Desoto has not received notice of  
2 to date.

3 MR. TENENBAUM: Off the record.

4 (Discussion had off the record.)

5 Back or not record.

6 We will try and see what we can do to  
7 accommodate everyone with their needs for  
8 depositions, given the extensive schedule of  
9 depositions scheduled over the next few days.

10 I would mention that the Boice  
11 deposition is now in day five, and perhaps some  
12 of the defendants could have combined their  
13 questions better or expedited the matters  
14 better, so as to reduce the need for days.

15 We are talking now it sounds like it  
16 will have to be a ten-day deposition according  
17 to the defendants. I wonder whether time has  
18 been used in an efficient fashion in that  
19 connection.

20 Just let me state for the record my  
21 schedule and the schedule of the other  
22 depositions in the case.

23 On Thursday, tomorrow, July 12th, we  
24 have the deposition of Robinson in Lexington,

1           **Kentucky.**

2                   On Friday, the July 13th, we have the  
3           deposition of Motorola scheduled as well as the  
4           deposition of Desoto, although I understand  
5           that that may be obviated by a stipulation,  
6           possibly.

7                   Nonetheless, we can arrange for other  
8           coverage for the deposition of Motorola, and  
9           assuming that the deposition of Desoto is not  
10          necessary because of a stipulation, we can  
11          continue the Boice deposition on Friday, as  
12          long as I can catch a 35 a plane on Friday,  
13          3:55 Chicago time.

14                   The deposition on July 16th, Monday,  
15          July 16th, we have the deposition of Insilco  
16          Corporation scheduled as well as the deposition  
17          of Ernest Dehart.

18                   It is possible that the deposition of  
19          Insilco will be obviated by stipulation, I do  
20          not know. If not, I might be able to arrange  
21          other coverage for that deposition.

22                   I will have to attend the deposition  
23          of Ernest Dehart if that goes forward. If it  
24          does not go forward, then July 16th would be a

1       potentially available date for yet another  
2       continuation of the Boice deposition.

3               On July 17th, in an attempt to be  
4       efficient, we have noticed the deposition of  
5       all nine defendants under Rule 30 (b) 6 for  
6       approximately one-hour depositions on the  
7       listed subject. And I will need to be present  
8       on those depositions.

9               On Wednesday, July 18th, we have  
10       noticed the deposition of Rust-Oleum. That may  
11       be obviated by a stipulation. If so, we can  
12       continue the Boice deposition yet again on that  
13       date, or possibly I could make an arrangement  
14       with someone else to take that deposition and  
15       we can still convene the continuation of the  
16       Boice deposition on that date.

17              On Thursday, I should add -- that  
18       was -- what was that Wednesday, July?

19              MR. KARAGANIS: 18th.

20              MR. TENENBAUM: July 18th. Off the record  
21       for a second.

22              (Discussion had off the record.)

23              Also on July 18th we have the  
24       deposition of IDEM continuation. I will



1        arrange for other coverage for that, so if the  
2        date is otherwise available I can do the Boice  
3        continuation.

4                We are off the record for a second.

5                (Discussion had off the record.)

6                On Thursday, July 19th, we have the  
7        deposition of Zenith scheduled as well as the  
8        deposition of Standard T. It is possible that  
9        one or both of those will need not to be taken  
10       because of a stipulation.

11               If only one of them is scheduled, I  
12       can probably arrange for other coverage for  
13       that deposition. If both of them are  
14       scheduled, I won't be able to do that and,  
15       therefore, I will have to take one of them.

16               And, otherwise, though, if there is  
17       only one of them scheduled on the 19th, that  
18       would also be a potential date for the  
19       continuation of the Boice deposition.

20               And Friday, July 20th, I don't know  
21       the potential possibility. So I would suggest  
22       that we --

23               MR. KARAGANIS: Let me just state for the  
24       record that, as many parties in this case, the

1 Justice Department has more than one attorney  
2 representing the United States government in  
3 this case. Listed as counsel in this case are  
4 at least three Justice Department attorneys.

5 Where there are any conflicts that  
6 have existed, they are conflicts that have been  
7 at least generated equally by the Justice  
8 Department's scheduling of depositions after  
9 other days have been scheduled.

10 So to the extent if we can work this  
11 out by agreement, that is fine. But, we are  
12 prepared to go forward tomorrow. If you want  
13 to have another Justice Department attorney  
14 here tomorrow, we will prepare to go forward  
15 tomorrow, on Friday, on Saturday and on every  
16 day next week, so that we can complete this  
17 deposition.

18 Mr. Boice's deposition involves a  
19 witness that you have designated as having  
20 expertise and knowledge about a wide variety of  
21 subjects. Indeed, he is the only 30 (b) 6  
22 witness you have designated.

23 As a result, given the fact that this  
24 case involves tens of millions of dollars, the

1 deposition schedule that has been established  
2 for Mr. Boice is not at all unreasonable.

3 So we feel that it is incumbent upon  
4 the government to produce the witness and  
5 counsel sequentially on dates continuing from  
6 today through the end of next week.

7 If you feel you can't do that, then  
8 give us specific dates that you can do it and  
9 we should have those dates by this afternoon.

10 MR. FINCH: Can we go off the record for a  
11 second?

12 MR. TENENBAUM: If I can respond on the  
13 record.

14 I do not agree with some of the  
15 statements that were made. These depositions  
16 were noticed on open dates, all the depositions  
17 that we have scheduled.

18 Correct me if I am wrong, but I think  
19 that American Can is only available on three of  
20 the days on --

21 MR. KARAGANIS: I told you I would be  
22 available Thursday, Friday, Saturday, as well  
23 as Tuesday, Wednesday and Thursday of next  
24 week. So I am available on six of the days.

1           MR. TENENBAUM: All right. But on some of  
2 those days one of your other co-counsel wants  
3 to question.

4           MR. KARAGANIS: My co-counsel indicated he  
5 wanted to question on Monday. He also wanted  
6 to question on Friday.

7           MR. FINCH: Or Saturday.

8           MR. KARAGANIS: Or Saturday.

9           MR. TENENBAUM: Maybe American Can should  
10 question on Friday, but I will have to leave  
11 that to you to work out.

12          MR. FINCH: I don't think that the record,  
13 Alan, will be expedited if we start switching  
14 off days.

15                 I think the only way to move this  
16 along and save everyone time is for each of us  
17 to complete his questioning and then the next  
18 attorney to pick up.

19                 Particularly in view of the  
20 possibility that the witness may claim to have  
21 answered questions that were already asked. I  
22 just don't think it is very efficient to divide  
23 it up that way.

24                 Can we go off the record for a moment.

1 (Discussion had off the record.)

2 Could the reporter please read the  
3 last two questions and answers, please.

4 (The record was read.)

5 Q. Mr. Roice, have you been able to  
6 identify any information in materials you  
7 looked at during the break that show this  
8 inconsistency?

9 A. Yes.

10 Q. What materials are those?

11 A. Well, besides I mentioned before the  
12 remedial investigation feasibility study.

13 Q. Yes.

14 A. Beside that, there was another  
15 document submitted by ERM during negotiations,  
16 which concluded that if solidification was  
17 conducted, the ground water pumping and  
18 treatment system would only have to operate for  
19 three to five years.

20 If it was not conducted, then the  
21 ground water treatment system would have to  
22 operate for many years, maybe a hundred years  
23 or so.

24 So that indicated another change in

1 ERM's position from before the public comments  
2 period. They advocated that during the public  
3 comment period they were -- they argued against  
4 its effectiveness, then back during the  
5 negotiation period they argued again that it  
6 was effective.

7 Q. Okay.

8 A. That would have also reflected the  
9 position of the Midco Steering Committee at  
10 that time.

11 Q. I asked you what documents. In order  
12 for this deposition to proceed a little more  
13 orderly, I need to focus these questions on a  
14 step-by-step basis, if I may.

15 Now, you alluded to negotiations.  
16 What negotiations are you alluding to?

17 A. Both following the public comment  
18 period, or actually it started even during the  
19 public comment period.

20 There were negotiations with the Midco  
21 Steering Committee regarding implementation of  
22 the final remedy at the Midco I and Midco II  
23 sites. It was conducted from May -- the first  
24 meeting, the notice letter was May 9. That

1 initiated the negotiation period. It ended  
2 around the middle of September.

3 Q. Okay.

4 Now, you said there was a document  
5 that ERM produced during negotiations that was  
6 inconsistent with the conclusions stated in  
7 Exhibit No. 51?

8 A. That's correct.

9 Q. Now, what is that document?

10 A. Wait a minute, now. The statement in  
11 Exhibit 51. Okay.

12 I don't remember the date, but it was  
13 a document that evaluated the length of time it  
14 would take to meet clean-up action levels in  
15 the ground water if solidification was  
16 conducted, and if it was not conducted. And it  
17 was submitted during the negotiations period,  
18 probably in July.

19 MR. TENENBAUM: Let me just state for the  
20 record that we reiterate our object to this  
21 whole line of questioning.

22 We are only permitting the witness to  
23 answer for the limited purposes -- subject to  
24 our objections, for the limited purposes of

1       this bad faith question.

2               MR. FINCH: That is fine.

3               Q.    Was this document a letter, was it a  
4       report, was it a memorandum, what was it?

5               A.    Well, it was transmitted with a letter  
6       from one of the defendant's attorneys. I think  
7       it was Harker. It was a memo to them, to  
8       Harker.

9               Q.    Tim Harker?

10              A.    Yes.

11              Q.    Is it part of the administrative  
12       record?

13              A.    No, it was submitted following the  
14       R.O.D. So it is not part of the administrative  
15       record.

16              Q.    Is it part of any of the  
17       administrative records that are assembled in  
18       connection with the certification that was  
19       filed with the court?

20              A.    No, because it was a negotiation  
21       document.

22              Q.    Okay.

23              Do you have a copy of that document in  
24       your file?



1           A.     Yes.

2           MR. KEATING:  What file is that again?  Is

3           that the one that we have over there, do we

4           have a name for it?

5           MR. FINCH:  I don't think so.

6           Q.     What file is it in, Mr. Boice?

7           A.     In the EPA's files.

8           Q.     EPA's files.

9           MR. KEATING:  That is what I called it.

10          BY MR. FINCH:

11          Q.     Would you be able to locate that

12          document?

13          A.     Yes.

14          Q.     All right.

15                 I will make a request that the

16          document be produced at the time that the first

17          and second drafts of the RI report are

18          produced, which will be the next session with

19          Mr. Boice.

20          A.     When is the next session?

21          MR. TENENBAUM:  Friday.

22          A.     I don't know whether we can get the

23          first and second drafts by then.

24          MR. TENENBAUM:  I think that is 24 hours.

1                   We will request that tomorrow morning  
2                   and it will come back sometime on Friday,  
3                   hopefully.

4                   A.     Right.

5                   MR. FINCH: Well, we will make the request  
6                   now. And I would be more than happy, since we  
7                   have been off the record so much, if the  
8                   request could be submitted today, then that  
9                   might expedite it.

10                  You can't do that?

11                  A.     No, it is already 4, after 4:00  
12                  o'clock.

13                  MR. TENENBAUM: I would mention that either  
14                  you or your co-defendants certainly have a copy  
15                  of this document.

16                  MR. FINCH: I am sure we do.

17                  But, for the record, I want to review  
18                  the copy that is in the EPA's files to see if  
19                  there are any notes or memoranda connected to  
20                  it or interlineations that may be a subject of  
21                  testimony.

22                  Q.     Are there any other materials which  
23                  show this inconsistency that you testified to  
24                  before the break, Mr. Boice?

1           A.    Yes.

2                   The remedial investigation feasibility  
3 study provides information on showing the -- an  
4 inconsistency with that statement.

5           Q.    What information is that?

6           A.    On page 6 of Exhibit 51.

7                   That is, the remedial investigation  
8 provided information on risks due to various  
9 chemicals on the site by different means of  
10 exposures due to direct contact with the  
11 wastes, ingestion of the soils on-site,  
12 ingestion of the ground water.

13          Q.    To what are you alluding, you said  
14 page 6 of Exhibit 51?

15          A.    Right. Regarding the last question.  
16 Regarding whether 4A and 4C --

17          Q.    Right.

18          A.    -- accomplishes essentially the same  
19 risk reduction as 7 and 8.

20          Q.    All right.

21          A.    And since 4A and 4C do not address  
22 soil treatment directly, they would not address  
23 the -- after the ground water pumping and  
24 treatment would be completed, there is no

1       guarantee that we would meet -- in fact, it is  
2       very unlikely we would meet clean-up action  
3       levels for the soil, which were based on direct  
4       ingestion, in case the site was developed in  
5       the future.

6               Also, it states in the remedial  
7       investigation that there are risks from the  
8       ground water from leaching through the soils  
9       and the contaminants leaching from the soils  
10      into the ground water.

11             And so even when they are done with 4A  
12      or 4C, there was no systematic way of flushing  
13      out the contaminants.

14             So, after they put the cap over, if  
15      the cap was disturbed in the future, there  
16      would be both a direct contact threat again and  
17      the potential for contaminating the ground  
18      water.

19             Q.    So the record is clear, Mr. Boice,  
20      could you identify what --

21             A.    I didn't, I am not done.

22             Q.    Oh.

23             A.    That is expressed clearly in the  
24      feasibility study, table 4 -- table 4-2, where

1       it states under, "Protectiveness of human  
2       health and the environment long-term," for  
3       alternatives 4, which include only the ground  
4       water treatment:

5                        "If failed, risks  
6                        at the site are similar to  
7                        no-action."

8       And:

9                        "After remediation  
10                      is completed, if deed  
11                      restriction and site  
12                      maintenance are performed,  
13                      all risks are reduced below  
14                      acceptable levels."

15      And:

16                      "Permanently and  
17                      significantly reduces  
18                      mobility of contaminants in  
19                      the soils, but does not  
20                      reduce toxicity or volume  
21                      of some contaminants in  
22                      soil, as compared to  
23                      Alternatives 7 and 8."

24      Which indicate under protectiveness of

1 long-term, under, "Protectiveness of human  
2 health and the environment long-term:

3 "After remediation  
4 is completed, all risks are  
5 reduced below acceptable  
6 levels, and permanently and  
7 significantly reduces  
8 mobility of contaminants in  
9 soil and ground water."

10 I am done.

11 O. You are done, all right.

12 Can we go off the record for a second.

13 (Discussion had off the record.)

14 Can we have the question and the  
15 answer read back.

16 (The record was read.)

17 We are off the record.

18 (Discussion had off the record.)

19 Back on the record.

20 MS. ANDERSON: I would just like the record  
21 to reflect that Desoto was just served today  
22 with a copy of the notice of deposition of  
23 generator defendants, which requests Desoto  
24 Inc. to appear for a deposition July 13th at

1 the offices of Gardner, Carton & Douglas.

2 We have spoken with Mr. Tenenbaum as  
3 to that notice, but we have only as recently as  
4 moments ago received notice of depositions of  
5 generator defendants scheduled for July 17th as  
6 to various issues, and we would just like the  
7 record to reflect the timeliness of this  
8 notice, the lack thereof.

9 MR. TENENBAUM: Let me state our position  
10 on that for the record.

11 The packet that you were just handed  
12 in response to your suggestion that you didn't  
13 have a copy of it was one packet, including  
14 notice of the July 13th deposition as well as  
15 the July 17th deposition.

16 I think you had indicated previously  
17 off the record, while you do not believe you  
18 had a copy of any of them, but that you were  
19 aware of the July 13th one from other  
20 defendants.

21 I would look into what happened to  
22 your service copy of that, if it is possible to  
23 find out. Our certificate of service indicates  
24 that it should have been sent to you on July

1           2nd. I don't know why that wouldn't have been.  
2           Some things do get lost, and we will look into  
3           that.

4           MS. ANDERSON: We never received a packet  
5           on July whatever.

6           MR. TENENBAUM: Is there anyone else who is  
7           missing that packet?

8           MR. KARAGANIS: I haven't seen it. All I  
9           have seen is the first part. I have not seen  
10          the second part.

11          MR. TENENBAUM: I am confident that if you  
12          got the first part, you got the second part.

13          MR. KARAGANIS: You may be confident, but I  
14          am telling you we haven't received it.

15          MR. TENENBAUM: If you look at your copy, I  
16          think you will find it there. We will be glad  
17          to give you another copy.

18                 If you want another copy, why don't we  
19          get another copy.

20          MR. KARAGANIS: Thank you.

21                 Let the record show we are just  
22          getting this notice with respect to the July  
23          17th notice this afternoon.

24          MR. FINCH: We are off the record. Do you



1 want to be on?

2 MR. TENENBAUM: Again, it is our belief  
3 that these packets were mailed as one. I am  
4 quite confident that if the first part was  
5 received, the second part would have been  
6 received with it.

7 MR. FINCH: Go off the record for just half  
8 a second.

9 (Discussion had off the record.)

10 Back on the record.

11 Q. Mr. Boice, a moment ago you alluded to  
12 different parts of the RIPS. I want to go back  
13 a little and make sure I understand what you  
14 were testifying to.

15 What parts of the RIPS, without  
16 explaining what those parts say, evince the  
17 inconsistency that you have just testified to  
18 in ERM's position?

19 A. Well, I would say the RIPS as a whole,  
20 and both documents are in the record.

21 Q. You quoted from certain tables, did  
22 you not?

23 A. Yes.

24 Q. What portions of the tables did you

1 quote from?

2 A. Table 4-2 of the Midco I feasibility  
3 study and the table is identical in Midco II.

4 Q. 4-2?

5 A. 4-2.

6 Q. And the tables for Midco II are  
7 identical did you say?

8 A. I quoted from Midco I, table 4-2.  
9 There is an identical, nearly identical table  
10 for Midco II.

11 Q. What portion of table 4-2 as to Midco  
12 I did you quote from?

13 A. As you can see, it is under  
14 effectiveness, the column, "Protectiveness of  
15 human health and the environment." And rows  
16 Alternative A, the same statements are in  
17 Alternative B and Alternative C.

18 Q. All right.

19 A. Which are the ground water, remedial  
20 action including only pumping and treating the  
21 ground water with no source treatment.

22 Q. What was your comment as to those  
23 aspects of these tables?

24 A. Well, I quoted directly what it said

1 in the table.

2 Q. What portion did you quote from?

3 A. I already told you which portion.

4 Q. I know. But, I am trying to go over  
5 it again so that the record is clear.

6 I don't think it was real clear the  
7 first time.

8 A. Okay.

9 Table 4-2, the column, "Protectiveness  
10 of human health and the environment." And  
11 there was also parts from the column,  
12 "Reduction of toxicity, mobility and volume,"  
13 for alternatives 4A, B and C. And then under  
14 the same columns for alternatives 7 and 8.

15 Q. What are alternatives 4A, B and C,  
16 describe those?

17 A. Those are essentially alternatives  
18 that include treatment, pumping and treating  
19 the ground water, and putting a cap over the  
20 site.

21 Q. And alternatives 7 and 8?

22 A. They would include the pumping and  
23 treating of the ground water, solidification,  
24 and then putting a site cover over the site.

1           Q.    Was it your point that there was, to  
2   use your words, no systematic way of flushing  
3   out the contaminants under 4A, B or C?

4                   I think you used those words.  I am  
5   not sure I understood the context.

6           MR. TENENBAUM:  Same continuing objection.

7           A.    Except the one statement I made, that  
8   there was no -- under those alternatives, there  
9   was no design method of flushing out the  
10  contaminants from the aquifer.

11                   And as I stated in my record of  
12  decision, even if there was, even if the more  
13  mobile contaminants were somehow flushed out,  
14  there would be an unacceptable risk remaining,  
15  due to direct ingestion at the site.

16           Q.    Direct ingestion of soils?

17           A.    Yes.

18                   And that also could cause ground water  
19  contamination also.

20           Q.    Ground water contamination.

21                   Ground water contamination unless  
22  there is solidification?

23           A.    Right.

24                   If the cap over the site was disturbed

1 in the future, there could be both a direct  
2 contact risk and a risk due to contamination of  
3 of the ground water.

4 Q. Did you understand ERN's position to  
5 have included any thoughts on the  
6 implementation risk of soil solidification?

7 MR. TENENBAUM: Same continuing objection.

8 A. Yes. Implementation is also included  
9 in the evaluation criteria.

10 BY MR. FINCH:

11 Q. What do you mean by evaluation  
12 criteria?

13 A. Under the National Contingency Plan,  
14 there are 99 criteria that are used in  
15 evaluation of the remedial action and the  
16 decision on remedy selection. That includes  
17 technical -- well, implementability, it  
18 includes implementability.

19 Q. Does it include implementation risk?

20 A. Yes. Or short-term risk, yes.

21 Q. So short-term and implementation risks  
22 mean the same thing, just as a matter of  
23 nomenclature?

24 MR. TENENBAUM: Same continuing objection.

1           A.    Yes, generally.

2           BY MR. FINCH:

3           Q.    And do you know the portion of the  
4           RIFS in which ERM addressed implementation risk  
5           of soil solidification?

6           A.    Well, the feasibility study was  
7           prepared by Dames & Moore, but I presume that  
8           they reviewed it, yes.

9                   The implementation risk?

10          Q.    Yes.

11          A.    Okay.

12                   That would be under protectiveness of  
13          human health and environment short-term, in  
14          table 4-2.

15          Q.    That would include alternatives 4A,  
16          4B, and 4C, as well as 7 and 8?

17          A.    Correct.

18          Q.    Mr. Boice, when you began to notice  
19          these variances in ERM's position on soil  
20          solidification, did you ever attempt to call  
21          ERM's attention to that fact?

22          A.    Yes.

23                   When ERM prepared their responses,  
24          their responses to our feasibility study and

1 proposed plan, which was in the May 19th  
2 document from ERM, we addressed their comments  
3 in our own responsiveness summary which was  
4 attached to the record of decision, which was  
5 signed by Valdas Adamkus on June 30, 1989.

6 Q. But other than a formal official  
7 response to formal official comments, did you  
8 ever attempt to discuss these variances with  
9 ERM?

10 A. No.

11 In fact, ERM was the representative  
12 for the respondents. They are -- my feeling is  
13 they weren't interested in an informal  
14 discussion, certainly after the feasibility  
15 study had been completed.

16 We did discuss the feasibility study,  
17 the remedial investigation and feasibility  
18 study issues during the process of completion  
19 of that. But, the -- after selection of the  
20 remedy, then the lines of communication were  
21 formal.

22 Q. After the selection of the remedy, you  
23 mean the issuance of the R.O.D.?

24 A. Yes.

1                   And, well, actually I should go back  
2                   to after the preparation of the proposed plan  
3                   and the public comment period.

4                   Q.     Why were relations at that point  
5                   formal?

6                   A.     Because ERM had finished their --

7                   Well, Midco Steering Committee had  
8                   completed their obligations to complete the  
9                   feasibility study when the February 1989  
10                  feasibility study was submitted by Dames &  
11                  Moore. That completed their obligations under  
12                  the decree, except for completing the  
13                  solidification tests.

14                  Therefore, we had no need to  
15                  correspond with them any more to implement, to  
16                  complete the remedial investigation feasibility  
17                  study.

18                  Q.     You may not have had the need to do  
19                  it. Is it your testimony that you had no right  
20                  to do so?

21                  MR. BERMAN: I am sorry. I missed the  
22                  question. What was it?

23                  MR. FINCH: Let me withdraw the question.

24                  Q.     Have you ever as an RPM engaged in



1 informal discussions with engineering  
2 consultants retained by PRP's during the  
3 preparation of RI or FS documents, even after  
4 the documents have been submitted in  
5 preliminary form?

6 I mean, do you understand my question?

7 A. Yes.

8 Naturally if they are preliminary  
9 documents, we have to comment on them, get back  
10 to them, and we have informal discussions on  
11 the corrections that need to be made to the  
12 documents, in order to gain the approval of the  
13 Agency.

14 Q. I am trying to figure out, Mr. Boice,  
15 why you didn't discuss the supposed variances  
16 or inconsistencies with ERM prior to the formal  
17 notice and comment process.

18 Could you tell me why?

19 MR. TENENBAUM: Prior to the formal?

20 MR. FINCH: Right.

21 A. I would say --

22 MR. FINCH: Do you understand?

23 MR. TENENBAUM: I am not sure. I am a  
24 little confused now. Maybe I am missing a

1 division of the time period. But --

2 MR. FINCH: Okay.

3 MR. TENENBAUM: You are saying that he  
4 testified that -- he did make reference to  
5 certain discussions at some earlier period.

6 Is that the same one you are referring  
7 to?

8 MR. FINCH: That is a fair comment. Let me  
9 withdraw the question.

10 Q. You said that after the issuance of  
11 the RIFS, that was when informal discussions  
12 with ERM ceased?

13 A. Would you repeat that?

14 Q. After the issuance of the RIFS, that  
15 was when your informal discussions with ERM  
16 ceased?

17 A. I would say after completion of the  
18 remedial investigation feasibility study.  
19 February 1989.

20 Q. All right.

21 Is there any reason why you did not  
22 following the issuance of the RIFS in February  
23 1989 --

24 A. It wasn't issued. It was completed.

1 We leased it for public comment on April 20,  
2 1989.

3 Q. Well, between the time that it was  
4 completed and the time it was released for  
5 public comment, between February and April  
6 1989, did you discuss informally with ERM these  
7 alleged variances or inconsistencies in their  
8 position on soil solidification?

9 A. I think I have already testified that.

10 MR. TENENBAUM: Same objection.

11 A. That we didn't -- we had no indication  
12 that ERM would argue against the effectiveness  
13 of solidification. Based on the feasibility  
14 study, they were advocating basically the  
15 effectiveness of solidification.

16 We had no arguments against it until  
17 we got their formal comments dated May 19,  
18 1989. So we could ask the same question. Why  
19 if they had these reservations or concerns  
20 about the effectiveness of solidification, then  
21 why didn't they talk to us about it.

22 Q. Are you absolutely certain there was  
23 no misunderstanding on your part of what ERM's  
24 position was on soil solidification?

1           MR. TENENBAUM: At what time?

2                   He testified that they changed their  
3 position.

4           MR. FINCH: Well, let's break it down.

5           Q. Are you absolutely certain that you  
6 had no misunderstanding of their position as of  
7 the time that the RIFS was complete in February  
8 1989?

9           A. I think that we have -- I have  
10 consistently been saying that, I have never  
11 made a claim that I really knew ERM's position.  
12 All I know is what apparently their position  
13 was.

14                   For example, in our responses to -- in  
15 the Exhibit 50, Part III, it says apparently  
16 ERM's assessment of the effectiveness of  
17 solidification/stabilization has varied.

18                   I mean, that is based on the documents  
19 we are receiving from them, the communications  
20 we are getting from them. It has apparently  
21 varied.

22           Q. I am still not clear as to why you  
23 didn't try to clear up this apparent variance  
24 before forming an impression of bad faith?

1           A.    I never stated that my impression of  
2           bad faith was due solely to this issue.  As I  
3           stated before, it was due to their overall  
4           performance on the project.

5           Q.    Does Exhibit 50, Part III, response 1  
6           refresh your recollection as to ERM's position  
7           on a discharge point?

8                    Take a look at the last paragraph on  
9           the first page of Part III.

10          A.    Would you repeat the question?

11          Q.    Does the last paragraph of Part III,  
12          page 1 of Boice Deposition Exhibit 50 refresh  
13          your recollection about ERM's alleged  
14          inconsistency about a discharge point?

15          A.    To some degree.  Yes.

16          Q.    The last paragraph states, and I  
17          quote:

18                    "ERM has also been  
19                    inconsistent about the  
20                    potential acceptability to  
21                    IDEM and EPA of a discharge  
22                    to the Grand Calumet River  
23                    or to a POTW.  In a meeting  
24                    dated January 15, 1988, ERM

1 indicated that they would  
2 look further into the  
3 potential for a POTW  
4 discharge. Later in a  
5 letter from ERM dated  
6 February 2, 1988, ERM  
7 concluded that the only  
8 available discharge point  
9 for significant quantities  
10 of saline ground water at  
11 both sites is a deep well."

12 Do you agree with the assertions  
13 contained in that paragraph?

14 MR. TENENBAUM: Same continuing objection.

15 A. I agree with the statements in the  
16 paragraph. Yes.

17 BY MR. FINCH:

18 Q. Was it your understanding at the time  
19 that this response was prepared that ERM  
20 favored discharge to a publicly operated  
21 treatment works?

22 A. You mean at the time this Exhibit 50  
23 was prepared?

24 Q. That's right. Exhibit 50.

1           A.    No.

2                   At that time they were arguing  
3           against -- were arguing that a POTW discharge  
4           should be allowed.

5           Q.    Should be allowed.

6                   So that I understand you, your thought  
7           was at some point they said it should not be  
8           allowed?

9           A.    That's correct, or, no, they had  
10          concluded that the agencies would not allow a  
11          discharge. And later they concluded, they  
12          argued that the agencies would and should allow  
13          a discharge.

14          Q.    What agencies are you referring to?

15          A.    The Indiana Department of  
16          Environmental Management and USEPA.

17          Q.    So, it is your understanding that at  
18          some point, say as of February 12, 1988, FRM  
19          thought that a discharge to a POTW would not be  
20          allowed by these agencies; is that right?

21          A.    That's correct.

22          Q.    Because of the salinity of the ground  
23          water?

24          A.    Yes. Not without removal of the

1           salinity, right, or reduction of the salinity.

2           Q.    Are you talking about ERM's views on  
3           whether such a discharge would, in fact, be  
4           allowed by EPA and IDEM, or whether it ought to  
5           be allowed by EPA or IDEM? I don't understand  
6           which.

7           A.    It was whether it would be allowed.  
8           Their position on whether it would be allowed  
9           changed.

10          Q.    So as of January 15, 1988, your  
11          understanding is that ERM indicated that such a  
12          discharge would be allowed by IDEM and USEPA?

13          A.    What did you say?

14          Q.    If the question could be read back.  
15                 (The record was read.)

16          A.    No.

17                 The statement in Exhibit 50 clearly  
18          states that:

19                         "In a meeting  
20                         dated January 15, 1988, ERM  
21                         indicated that they would  
22                         look further into the  
23                         potential for a POTW  
24                         discharge. Later in a



1 letter from ERM dated  
2 February 2, 1988, ERM  
3 concluded that the only  
4 available discharge point  
5 for significant quantities  
6 of saline ground water at  
7 both sites is a deep well."

8 Q. Did ERM ever explain to you why it  
9 later proposed discharge to a POTW in view of  
10 the position it supposedly took on February 12,  
11 1988?

12 A. Yes. Again, their comments were in  
13 public comments submitted on May 19, 1989 to  
14 the Agency.

15 Q. Do you have a copy --

16 A. As well as -- yes. That's the same  
17 document that we were looking at for  
18 solidification issue.

19 Q. Okay.

20 That is Exhibit No. 51, I think?

21 A. Yes.

22 Q. Do you know where in Exhibit No. 51  
23 they address the issue of discharge to a POTW?

24 A. It is addressed on pages 8 and 9 of

1       Exhibit 51.

2           Q.   How is what appears on pages 8 and 9  
3       on Exhibit 51 inconsistent with the conclusion  
4       ERM supposedly reached on February 12, 1988?

5           A.   Okay.

6               Well, it says on page 8:

7                       "Alternatively a  
8               National Pollutant  
9               Discharge Permit, NPDES  
10              permit, should be issued  
11              allowing discharge of salty  
12              ground water after  
13              hazardous waste  
14              constituents have been  
15              treated to the levels  
16              required in the NPDES  
17              Permit to the Grand Calumet  
18              River."

19              Then it continues to say that in his  
20       opinion that the discharge would be a very  
21       small additional load to the Grand Calumet  
22       River, very small additional TDS load.

23           Q.   How is that inconsistent with ERM's  
24       position as of February 12, 1988?

1           A.    Well, on February 12 they conclude  
2           what the only available discharge point for the  
3           saline ground water was. Of course, that was  
4           early in the feasibility study. And the proper  
5           time to look into these issues would have been  
6           at that time.

7                   And then subsequently they made no  
8           further -- apparently no further discussions  
9           with us regarding the possibility of a  
10          discharge to a POTW. And here they indicate  
11          that they think it is a possibility that the  
12          agencies could or should allow this type of  
13          discharge.

14          Q.    You said there were no further  
15          discussions with you regarding such a  
16          possibility?

17          A.    No.   ERM.

18                   There were no further discussions from  
19          ERM regarding the possibility of a discharge to  
20          a POTW.

21          Q.    I am not sure I understand what you  
22          mean by discussion?

23          A.    Discussions during the completion of  
24          the feasibility study.

1 Q. They did not --

2 A. Until we received the public comments  
3 on May 19, 1989.

4 Q. So during the completion of the  
5 feasibility study, they did not discuss with  
6 you the possibility of arranging for or seeking  
7 an NPDES permit?

8 A. No, as far as I can remember, there  
9 were no further discussions of that  
10 possibility.

11 Q. I am still not too sure what the  
12 inconsistency is between ERM's position on  
13 February 12, 1988 and its position on May 19,  
14 1989.

15 Is the inconsistency that in your view  
16 that as of February 12, ERM had concluded that  
17 an NPDES permit would not be issued and then  
18 later it said that one should be sought?

19 A. Yes.

20 And they also indicated in  
21 negotiations that it could be -- it could be  
22 arranged somehow with the Agency.

23 Q. What do you mean arranged somehow do  
24 you mean seeking a formal variance for

1 discharge limits?

2 A. I don't know. I don't know what  
3 procedure they were referring to.

4 Q. Is it your recollection that they used  
5 the phrase arrange somehow?

6 A. No, it is not.

7 Q. What is your recollection?

8 A. Just that they advocated the point of  
9 view that there could be -- that a discharge to  
10 a POTW was a possibility that the Agency --  
11 they thought the Agency would consider,  
12 including the State of Indiana.

13 Q. Do you know whether the State of  
14 Indiana ever did, in fact, consider such a  
15 possibility?

16 A. Yes, they did.

17 Q. Do you know whether USEPA was ever  
18 asked to consider such a possibility?

19 A. Yes, we were.

20 Q. I am not asking whether they did.

21 MR. TENENBAUM: Same continuing objection.

22 BY MR. FINCH:

23 Q. They were asked.

24 Who asked USEPA to consider such a

1 possibility?

2 A. The State of Indiana and -- the State  
3 of Indiana and the Midco Steering Committee.

4 Q. Do you recall when they made that  
5 request?

6 A. Who?

7 Q. Start with the State of Indiana.

8 A. State of Indiana in their concurrence  
9 letter dated June 30, 1989.

10 Q. And the Midco trustees?

11 A. In their public comments, this  
12 included the comments from ERM.

13 MR. TENENBAUM: Let's go off the record.

14 MR. FINCH: Sure.

15 (Discussion had off the record.)

16 We can go back on the record.

17 Do you want to set a time formally for  
18 Desoto's deposition on Friday, so that if that  
19 doesn't take place we can pick up with this?

20 MR. TENENBAUM: Okay, 9:00 o'clock.

21 MR. FINCH: Okay.

22 (Discussion had off the record.)

23 Back on record.

24 We are going to resume this deposition

1       at this location immediately following the  
2       United States' deposition pursuant to notice of  
3       Desoto, which counsel for Desoto and the United  
4       States have agreed will take place at this  
5       location beginning 9:00 a.m. on Friday, July  
6       13th.

7               If, as anticipated by some of us,  
8       there is no Desoto deposition, then the Boice  
9       deposition will resume at that time at this  
10      location.

11  
12                       (Whereupon the deposition  
13                       was continued to July 13,  
14                       1990 at the hour of 9:00  
15                       o'clock a.m.)  
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